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ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W. F. A. TURGEON
Commissioner

A. S. Whiteley, Secretary

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J.C.McRuer, Esq. K.C.

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TORONTO
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ROYAL COMMISSION ON THE TEXTILE INDUSTRY

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ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

A P P E A R A N C E S -----

J.C. McRuer, K.C. and
E. Beauregard, K.C.) Commission Counsel,

R.L. Kellock, K.C. For Primary Textile Institute.

C.G. Howard, K.C.)
Aime Geoffrion, K.C.) For Dominion Textile
and
C.T. Ballantyne,)

ONE HUNDRED AND FIFTEENTH DAY

(February 22, 1937)

S.W. Bizzo, K.C. For Courtaulds Limited,

L.A. Forsyth, K.C. Canadian Celanese Ltd. and Canadian Silk Products Limited.

A.S. Pruessen, K.C. For Canadian Cottons,

Thos. Tremblay, K.C.)
and) For M.H. Bizo Co. Ltd.
J.H. Ratcert,)

Francois Lajoie, K.C. For Tobacco Cotton Co.

A R G U M E N T

-- oOo --

Robert Brydie,
Official Reporter.

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ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S.Whiteley, Secretary,

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company.
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J.R. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Sabasso Cotton Co.

-- oOo --

APPEARANCES:

J.J. Robinette, Q.C. and E. Bernstein, Q.C.	Counsel for Counsel.
R.L. Welsh, Q.C.	For Primary Textile Companies.
G.A. Gerard, Q.C. and Alan Geoffrion, Q.C. and G.T. Williams,	For Secondary Textile Company.
J.J. Blair, Q.C.	The Secondary Limited.
T.A. Murphy, Q.C.	For Canadian Acetate Products Limited.
A.W. Hunter, Q.C.	For Canadian Cottons.
Theo. Trowbridge, Q.C. and F.J. Emery,	For C.I.P. Inc. Co. Ltd.
Francois Lajoie, Q.C.	For Course Cotton Co.

-- 000 --

Ottawa, Ontario.
February 22, 1937.

--The Commission resumed at 10.30 a.m.

ARGUMENT BY MR. KELLOCK (resumed)

Mr. KELLOCK: Before I proceed from where I left off on Friday last I should like to correct an unfortunate typographical error in my factum at page 5, Section C. In paragraph 9 under the heading Sales - Canada the average is given as $17.32, and then the sentence appears:

"The average for all principal industries other than the textile industry was $24.28."

That should be $21.28. It is difficult to avoid these errors.

And now I should like to call Your Lordship's attention to a section of Mr. Beauregard's brief at page 121 where there appears the heading The Minimum Wage for Women. On the following page, a little below the middle of the page, my friend has a table dealing with the legal minima per week on the basis of the forty-eight hour week which was established in the 1935-36 period, and the legal minima are so much per hour divided in the percentages of 10, 25 and 65 per cent. My friend has ascertained what these hourly rates mean on the weekly basis. Under the heading Province on the right hand side there is a slight error. The statement is, "twenty-five per cent at least 8.06". That should be 8.16. It is 17 cents per hour for a forty-eight hour week.

The COMMISSIONER; You are referring to the

"twenty-five per cent at least 8.06"; you say that should be 8.16.

Mr. KELLOCK: Yes, My Lord. It is convenient there to see what the average legal minima per week are in the case of Montreal and the province. The weighted average per week for Montreal and environs is 10.78, that is the left hand column, and in the case of the province it is 9.19.

The COMMISSIONER: Is that the way it works out ?

Mr. KELLOCK: Yes, and the average hourly rates in the case of Montreal are 22.45 and in the case of the province 19.15 cents. In that same section, on page 125, my friend gives a table showing the actual basic wage per week, that is, the actual wages brought to full time basis. As regards the actual wages paid, brought to full time basis, taking the 1935-36 period, the last item in the table, your Lordship will recall that the legal hours per week established for forty-eight, while the actual hours worked in Montreal were 39 hours, and in the province 45 hours, so that the figure in the middle column under Montreal, for the 1935-36 period--

The COMMISSIONER: Under the heading earnings ?

Mr. KELLOCK: Yes, My Lord; that is 9.88. That is the average actual wages paid for 39 working hours.

The COMMISSIONER: And the basic rate was on how many hours ?

Mr. KELLOCK: On forty-eight hours. The 12.12 figure is the equivalent of 9.88 on the basis of

'twenty-five per cent as least 1.13; you say that should be 0.14.

Mr. [illegible]: Yes, my lord. It is extremely hard to see what the average local industry pay scale is in the case of unskilled men the average. The weighted average per week for [illegible] is 1.08, that is the left hand column, and in the case of the province it is 1.12.

The [illegible]: Is that the pay it [illegible]

Mr. [illegible]: Yes, and the average [illegible] in the case of [illegible] are 57.45 and in the case of the province 57, is [illegible]. In that same section, on page 326, my friend gives a table showing the actual basic wage per week, that is, the actual wage [illegible] to full time basis. As regards the [illegible] brought to full time basis, taking the [illegible] the last item in the table, your [illegible] full [illegible] when the legal hours are [illegible] per week [illegible] forty-eight, while the actual hours worked in [illegible] were 38 hours, and in the province 45 hours, so that the figure in the middle column under [illegible], for the 1930-34 period--

The [illegible]: [illegible]

Mr. [illegible]: Yes, my lord; [illegible] is 3.8p. [illegible] is the average actual wages paid for 48 working hours.

The [illegible]: And the basic rate was on [illegible] hours?

Mr. [illegible]: [illegible]

forty-eight hours.

The COMMISSIONER: It is the mathematical equivalent.

Mr. KELLOCK: Yes. What was actually paid was 9.88 because the workers worked only 39 hours. Had they worked the legal maximum of 48 hours the figure would be 12.12. Under the heading Province, the middle column, for the same period, the figure is 9.37; that is, the average actual wages paid on the basis of 45 hours actually worked.

The COMMISSIONER: And the basic wage was on 48.

Mr. KELLOCK: Yes; but in computing the basic wage there the figure my friend has, 11.20 is taken from the exhibit in which there is an obvious error. That 11.20 is on the basis of 55 hours, which was the legal maximum in effect for the preceding year.

The COMMISSIONER: Does that apply to all these figures ?

Mr. KELLOCK: It does to the preceding figures, but it would not be correct because 55 was the number of hours in force at that time.

Mr. WHITELEY: Is 48 hours the maximum now ?

Mr. BEAUREGARD: The maximum in previous years was 55 but since August 5, 1935, it has been 48.

Mr. WHITELEY: Outside Montreal ?

Mr. BEAUREGARD: In the whole province.

The COMMISSIONER: Then the correction I made was not quite accurate referring to the Montreal columns, that also applied only to this last year.

[illegible] Lawson.

The Witness: It is the maximum [illegible] adjustment.

Q. [illegible]: Yes. Does not [illegible] and [illegible] method the local maximum of 4.4 hours the figure would be 12.12. Under the [illegible] the middle column, for the same period, the figure is 9.37; that is, the average local maxima and on the basis of 46 hours actually worked.

Mr. [illegible]: Did the Weir report was so [illegible]

Q. [illegible]: Yes; but is [illegible] the basis upon the figures my friend has, 11.41 is [illegible] from the [illegible] in which there is a [illegible] error that 11.40 is on the basis of 15 hours, while the local maximum is correct for the [illegible] period.

The [illegible]: Does that [illegible] to [illegible] figures ?

Q. [illegible]: It does to the preceding figure, but it would not be correct however to use the maximum of hours in force at that time.

Q. [illegible] the maximum [illegible]

Q. [illegible] The maximum is [illegible] was 55 but after August 8, [illegible], it has been 48.

Q. [illegible] [illegible]

A. [illegible]: It is [illegible].

The [illegible]: Yes, the [illegible] I was not quite [illegible] [illegible] [illegible]

Mr. KELLOCK: Yes. Taking the 12.12 figure and the 11.20 figure which my friend has under the heading Province, if one figures that on the basis of 48 hours it should be $10. The exhibit has it 11.20, but it should be $10 even.

The COMMISSIONER: Has the maximum of 48 hours been in effect since 1935? There was some evidence to the effect that it was established in 1936.

Mr. KELLOCK: As we have stated it, the 48 hours was established as the legal maximum working week and it is not correct as we have put it. The rates that were established as legal hour rates in the 1935-36 period were established on the basis of a 48 hour week, so that that is the only place where 48 hours comes in. If 48 hours were worked it would result, in Montreal, in 12.12 per week and outside in $10 a week.

The COMMISSIONER: But there is nothing to prevent the mills working 55 hours.

Mr. KELLOCK: No; but the minimum rates which have been set has been fixed, so that if 48 hours were actually worked, then these figures per week would be earned and the minimum hours rates per week are set on that basis. But there is nothing to prevent the mills working beyond that time. The left hand column of that table shows that in each case what was actually paid if 48 hours in each case had been actually worked; but in Montreal only 39 hours were worked throughout the period. As a

Mr. MULLINS: Yes. Taking the 11.97 figure in the 11.80 figure which my friend has under the heading of Previous, if one figure that on the basis of 48 hours it would be 12.0. The minimum rate is 11.80, but it should be 12.0 even.

The CHAIRMAN: Has the minimum of 48 hours been in effect since 1944? Have you some evidence to the effect that it was established in 1944.

Mr. MULLINS: As we have stated it, the 48 hours was established as the local bargaining unit and it is not correct as we have put it. The rates that were established as local hour rates in the 1943-45 period were established on the basis of a 48 hour week, so that that is the only place where 48 hours comes in. If 48 hours were worked it would result, in overtime, in 1.125 per week and outside 1.125 a week.

The CHAIRMAN: Not since in reducing the overall the mills working 55 hours.

Mr. MULLINS: No; but the difficulties which have been put has been fixed, so that if 48 hours were actually worked, then that 11.97 or 12.0 would be earned and the minimum hours worked per week are set on that basis. But there is nothing to prevent the mills working longer than that. That left some doubt, of that. It is among that in such case what was actually paid if 48 hours is used or if some other figure is substituted with the hours some further 55-hour.

matter of fact it was just a two weeks period taken by Mr. Francq to ascertain these figures, so that the average wage which was actually paid in Montreal would be 9.88 and outside 9.37 in the sample period. But if 48 hours had been worked the wage that would have been paid would have been 12.12 in Montreal. They are computed on a weekly basis.

The COMMISSIONER: But they have reference to earnings per hour.

Mr. KELLOCK: Yes. I shall show in a moment that these are higher than the legal hourly rates.

The COMMISSIONER: The earnings ?

Mr. KELLOCK: Yes. In Montreal the actual basic rate is 12.12 per week but, as I pointed out in connection with page 22, the legal minimum for that district is 10.78.

The COMMISSIONER: Where is that 10.78 ?

Mr. KELLOCK: It is on page 122, the average in the left hand column. The 9.19 compares with the $10 on page 25, so that the basic rates are well in excess of the legal minimum, and any shortage as between the actual earnings of 9.88 and 9.37 and the legal minimum per week of 10.78 and 9.19 is due to the fact that a short week was worked in each case. If one takes it on a purely hourly basis, taking the figure I gave in dealing with page 122, the legal minimum per hour in Montreal 22.45 cents, the 9.88 per 39 hours works out at 25.3 cents per hour. In the same way in the province

matter of fact it was just a ten month period when
by Mr. Tanner to accordance these figures, on that
the average wage which was actually paid in actual
would be 0.98 and includes 2.07 in the sample period
that if 48 hours had been worked the wage that would
have been paid would have been 16.38 in contrast.
They are computed on a weekly basis.

The COMMISSIONER: but they have reference to
wage rate per hour.

Mr. [illegible]: Yes. I shall show in a moment
that these are higher than the legal hourly rates.

The COMMISSIONER: The contrast ?

Mr. [illegible]: Yes. In contrast the actual base
rate is 12.18 per week but, as I pointed out in
connection with page 142, the legal minimum for the
district is 10.72.

The COMMISSIONER: Where is that 10.72 ?

Mr. [illegible]: It is on page 142, the average
in the left hand column. The 0.18 compares with
the 110 on page 98, so that the basic rates are
well in excess of the legal minimum, and my above
are as between the actual earnings of 1.98 and 2.5
and the legal minimum per week of 16.72 and 2.11
is due to the fact that a short week was worked in
each case. If one takes it on a purely hourly
basis, taking the figures I gave in dealing with
page 142, the legal minimum per hour in contrast
[illegible], [illegible] would be [illegible] and
[illegible].3 cents per hour. In the same way in the year

the 19.15 is the legal rate per hour on the average basis, and the 9.37 works out, for 45 hours, to 20.8 cents. Mr. Francq testified that textile wages were better than the average outside Montreal and somewhat lower than the average in Montreal, and that is set out in Exhibit 759, which was filed. My friend refers to the evidence of Mr. Francq, at page 124, where he testified that $12 was what the board regarded as the more or less ideal basic wage.

The COMMISSIONER: He says:

"We established our cost of living budget at $12 per week; we compared it with the cost of living budget set by the Minimum Wage Commission of Ontario, and came to the same conclusion."

He said they estimated that it cost a woman alone $12 a week to live in Montreal.

Mr. KELLOCK: That is correct. In comparing that figure with the rates that were actually established, taking the average rates again at page 122, of 10.78 and 9.19, I would point out to Your Lordship that the Minimum Wage Board was established in 1925, and a cash budget cost of living of $12 per week, in 1926, the following year, would in February, 1936, have shrunk to 9.65.

The COMMISSIONER: Was the calculation made as long ago as 1926 ?

Mr. KELLOCK: At the time it was established in 1925. At page 124 the evidence is set out

the £6.15 is the level men get back to by comparison
bonus, and the £.80 works out, for 40 hours, at
20.4 cents. Mr. Brewer then said that textile mills
were better than the average industry, but that
nevertheless lower than the average in Montreal, and that
is set out in Exhibit 290, which was filed. Of
Italian workers to the evidence of Mr. Tonon, at page
1024, there he described that the men that the bonus
regarded as the more or less steady men.

The commissioner: go ahead:

"We established our cost of living on
at 12.50 weekly; we considered as it with the
cost of living budget set by the Dominion Bureau
Statistics of Canada, and came to the same
conclusion."

He said they estimated that it cost a worker
alone $12 a week to live in Montreal.

Mr. COLLOCK: That is correct. In connection
that figure with the rates that were actually earned
disclosed, taking the an average income in all trades
1940, of £6.75 and £.10, I would point out to Your
Lordship that the minimum wage in that year only
in 1935, and the cost budget cost of living of
$12 per week, in 1940, the following year, really
in February, 1942, have shown to be $.80.

The COMMISSIONER: Are the rates still a little
long ago as 1940?

Mr. COLLOCK: At the time it was substantially
in 1935. At page 1024 the evidence is set out

and this statement appears:

"This budget was set for female workers at the inception of Women's Minimum Wage Commission."

That was in 1925.

The COMMISSIONER: And you say that that figure can be now reduced to how much ?

Mr. KELLOCK: To 9.65. So that in setting the rates that are now in force, my submission is that the board cannot be regarded as having filled its functions unless the rates they have now set are at least equal to or in excess of the subsistence level.

The COMMISSIONER: When you give 9.65, in relation to what period do you take that figure ?

Mr. KELLOCK: As between 1926 and February 1936.

The COMMISSIONER: I have an impression that it is going up.

Mr. KELLOCK: The last available figure that I had at the time was February 1936, and that would be the time when the new rates were set by the Minimum Wage Board. In effect, they were set a little in advance of that, in August 1935. So that the rates actually paid in the province are in excess of the legal minima in each case, and in excess of the cost of living budget which was established by the board.

The COMMISSIONER: Twelve dollars was established for Montreal.

Mr. KELLOCK: Yes; it would be less outside. I come now to page 131 where my friend has a section

headed High Wages. It is really a comparison of the various occupational rates in Ontario and Quebec and in the northern and southern states, and that page is followed by a number of pages wherein my friend sets out the exhibits, up to page 134, dealing with the rates prevailing in Ontario and Quebec and in the northern and southern states.

As far as I can see, there are only two occupations in those tables that carry all the way through, and it is difficult to compare the rates set out there without assembling the figures. This I have done with regard to two occupations that are common, and I should like to discuss that for a moment or two. I would take speeder tenders and weavers.

The COMMISSIONER: You are speaking now of the mills.

Mr. KEILOCK: Yes.

The COMMISSIONER: Where are the figures given ?

Mr. KEILOCK: I am referring to page 134. I have assembled the result of these three pages in one table, which makes it easier for purposes of comparison. I have prepared a table from the exhibits which my friend sets out in his factum.

The COMMISSIONER: From what exhibits ?

Mr. KEILOCK: From Exhibit 1301 and 1302. I have a copy of this table for Your Lordship's use; I regret I have no others.

The COMMISSIONER: We will make this a new

[illegible] high [illegible]. It is really a [illegible] of the various occupational [illegible] in Austria can [illegible] and in the northern and southern states, and that page is followed by a number of pages showing [illegible] friend sets out the exhibits, on to page [illegible], [illegible] with the rate a prevailing in [illegible] and in the northern and southern states.

As far as I can see, there are only two occupations in these tables that carry all the way through, and it is difficult to compare the rates set out there without assembling the figures. This I have done with regard to two occupations that are common, and I should like to [illegible] moment or two. I would take shoemaker [illegible] weavers.

The [illegible]: You are speaking now of the file.

Mr. [illegible]: Yes.

The [illegible]: Have you the figures [illegible]?

Mr. [illegible]: I am referring to page [illegible]. I have assembled the result of these figures [illegible] one table, which makes it easier for purposes of comparison. I have prepared a table from the exhibits which my friend sets out in his [illegible].

[illegible]

Mr. [illegible]: From the [illegible] 1801 and 1806. I have a copy of this table for Your Lordship's use; I regret I have no [illegible].

The [illegible]: [illegible]

Exhibit 1338.

Mr. KELLOCK: Taking speeder tenders, the rate in Ontario in 1926 was 31.8. These are the rates per hour. In Quebec the figure was 26. For the north it is 46.5 and for the south 31.3. In 1930 the Ontario rate was 37.9 and the Quebec rate 26.8. The north had declined to 45.2 and the south was up slightly to 32. In 1933-34--and this is before the NRA--Ontario had declined to 26.6 and Quebec was 27.4; and the north had declined drastically to 29.6 and the south similarly to 21.5.

The COMMISSIONER: Quebec had gone up.

Mr. KELLOCK: Yes. The north had declined very markedly, and the same with the south. In 1936 Ontario had gone up to 28.7 and Quebec to 28.8, and the north had come back to 43.5, which is still less than in 1926, while the south had come back to 35.7 which was in excess of the 1933 rate. In the case of females in the same category, in Ontario the 1926 rate was 28.1 and in Quebec it was 24.9; and in the north it was 39.5 and in the south 27.5. By 1930 Ontario had declined to 26.8 and Quebec to 23.5, and the north was 36.3, while the south had gone up slightly to 28.3. By 1933-34 Ontario was 27.4 and and Quebec 23.4, and the north was 24.9 and the south 19.6. In 1936 Ontario was very much the same, 27.2 and Quebec was up slightly, 27.2; and the north was 40.4, which was slightly above the 1926 level and the south 35.5, which was the highest it had

(Mr. [illegible])

Mr. [illegible]: Taking Canadian Northern, the area in Ontario in 1906 was 31.6. Those are the areas out here. In Quebec the figure was 28. For the north it is 46.5 and for the south 41.6. In 1906 the Ontario rate was 27.9 and the Quebec rate 2[illegible]. The areas for Quebec in 1906 in the north and south [illegible] slightly to 26. In 1906-[illegible] this in Ontario the [illegible] Ontario had declined to 28.8 and Quebec was 27.4; and the north had declined slightly to 40.6 and the south slightly to 27.8.

The Commissioner: Quebec had gone up.

Mr. [illegible]: Yes. The north had declined [illegible] markedly, and the gain was with the south. In 1906 Ontario had gone up to 32.7 and Quebec to 28.7, and the north had gone back to 42.5, which is still lower than in 1906, while the south had gone back to 26.7 which was in excess of the 1906 rate. In the case of females in the same category, in Ontario the 1906 rate was 32.1 and in Quebec it was 24.9; and in the north it was 36.5 and in the south 27.3. By 1906 Ontario had declined to 26.8 and Quebec to 19.8, and the north was 25.5, while the south had gone up slightly to 28.3. By 1906-[illegible] Ontario was 27.4 and Quebec 22.6, and the north was 24.9 and the south 19.6. In 1906 Ontario was very much the same, 27.2 and Quebec was up slightly, 22.2; and the north was 42.4, which was slightly above the 1906 level, and the south 25.5, which was the highest it had

been during the period.

Taking weavers, in Ontario in 1926 the rate was 31.3 and in Quebec 33.3; in the north it was 46.7 and in the south 33.2. By 1930 the Ontario rate was 37.3 and the Quebec rate 36.1, and the north had declined to 46.2, while the south was up slightly to 34.9. In 1933-34 Ontario was 31.1 and Quebec 27, and the north was 29.9 and the south 23.8. In 1936, Ontario was 32.4, which was higher than in 1926, and Quebec was 30.5; the north was 44.2, which was still below the 1926 level, and the south was 40.3, which was again above.

In the case of females, in 1926 the rate in Ontario was 28.8 and in Quebec 27.7; the north was 42.8 and the south 29.8. By 1930 Ontario had advanced to 32.7 and Quebec had declined to 27, and the north was 42.6 while the south was 31.9. In 1933-34 Ontario was 27.4 and Quebec 25.8; the north had again declined drastically to 28 and the south similarly to 21.5. By 1936 Ontario had recovered somewhat to 29.3 and Quebec was 30.6; and the north was 43.5, which was slightly above the 1926 level and the south 38.4, which was above the 1926 level.

That is perhaps a sufficient comparison without running through the other two, and as between 1926 and 1936, the significant point is that the only marked change had been the bringing up of wages in the south closer to those in the north, so far as the United States is concerned, and as between 1926 and

been during the period.

Taking weavers, in Ontario in 1924 the rate was 31.5 and in Quebec 24.5; in the north it was 46.7 and in the south 23.8. By 1930 the Ontario rate was 37.3 and the Quebec rate 28.7, and the north had declined to 42.3, while the south was up and had to 24.9. In 1934-34 Ontario was 21.1 and Quebec 27, and the north was 27.4 and the south 22.8. In 1935 Ontario was 24.4, which was higher than in 1930, and Quebec was 20.8; the north was 44.2, which was still below the 1924 level, and the south was 40.2, which was again above.

In the case of dyers, in 1920 the rate in Ontario was 54.3 and in Quebec 47.7: the north was 48.9 and the south 22.4. By 1930 Ontario had advanced to 31.7 and Quebec had declined to 27, and the north was 42.6 while the south was 31.4. In 1933-34 Ontario was 27.4 and Quebec 23.3; the north had again declined drastically to 20 and the south similarly to 21.5. By 1935 Ontario had recovered somewhat to 31.3 and Quebec was 30.4; and the north was 15.3, which was slightly above the 1924 level, and the south 32.4, which was above the 1924 level.

That is perhaps a fair clear comparison without running through the other two, and as between 1924 and 1930, the significant point is that the only marked change had been the catching up of wages in the south closer to those in the north, so far as the data permit it discovering, as we believe 1924 and

1930 generally speaking Canadian wages were increased while United States wages remained constant. As between 1926 and 1933-34 the drop in Canadian wages was comparatively insignificant in relation to the drop in American wages, which was very drastic; and over the whole period Canadian wages were noticeably stable, while the American figures fluctuated widely.

I have prepared a graph which deals with these two classifications that have been discussed, and it discloses very graphically just what I have said --the great drop in United States wages and the recovery and the comparatively slight decline in Canadian wages and the more or less stable level which they maintained. These comparisons may be useful to Your Lordship.

When one bears in mind the advance in real wages which took place in the period between1926 and 1936, it is very evident that where there was an immense decline in the United States rates which were followed to some extent by Canadian rates, nevertheless the advance in real wages more than compensated for any actual fall in the nominal or actual wages paid.

If I may refer to page 135, my friend starts off by saying that Exhibit 1301 gives the average hourly earnings in the cotton section, and he uses that for the purpose of getting at the weekly wages paid in the case of mills. But in order to

[illegible] while United States wages remained stationary. As between 1899 and 1900-04 the drop in wages was comparatively insignificant in comparison to the a drop in American wages, which was most conspicuous over the whole period considered in the study under a 10% stable, while the American figures fluctuated widely.

I have prepared a graph which shows at a glance two classifications that have been discussed, and it discloses very graphically just what I have said --the great drop in United States wages and the recovery and the comparatively slight decline in American wages and the more or less stable level which they maintained. These comparisons may be useful to your lordship.

When one bears in mind the advance in real wages which took place in the United Kingdom and 1906, it is very evident that where there was an immense decline in the United States prices which were followed to some extent by American prices, nevertheless the advance in real wages were disconcerting for any actual fall in the nominal or actual wages rate.

If I may refer to page 120, my friend starts off by saying that Mulhall gives the average hourly earnings in the cotton industry, and he uses that for the purpose of getting at the poorly paid in the case of adults. But in order to

do that he takes the same false basis of 42 hours which we discussed last week, and which is wrong even as applied to females.

The COMMISSIONER: Does this apply to both ?

Mr. KELLOCK: Yes, to both males and females in both provinces. Now my submission is that basis is entirely wrong and that page therefore gets us nowhere and one cannot draw any conclusion from it at all. My friend compares the result he gets with the 12.12 basic actual wage paid in the Montreal district. What the purpose or the value of that comparison is I do not quite know, but in any event the figure he uses is arrived at by the use of a figure which is quite wrong in itself. Then on page 126 he uses the results that he has arrived at on page 135 to compare again with the 12.12 which is the actual basic wage paid in Montreal. What he has done, after having got the first table on page 135, which I submit is wrong, is this: He adds up the column and then divides by 9. Taking the first column the total is 114.07 and he divides by 9, which is the number of categories dealt with, and he gets 12.66 which is the first figure on page 136. Even if the table itself were correct, and I submit that it is not, I submit that you cannot get the average wage paid in any case by dividing by the number of categories. That entirely ignores the number of wage-earners in the group of categories there.

Mr. WHITELEY: The figure for Quebec, 11.19,

do that he takes the same false basis of 40 hours which we discussed last week, and which is wrong [illegible].

The [illegible] : Does this apply to men ?

Mr. ROBSON : Yes, to both males and females in [illegible]. The by analogical is that basis is entirely wrong and that page [illegible] is on [illegible] and one cannot draw any conclusion from it at all. My friend compares the [illegible] the 16.12 basis actual wage paid in the industrial district. What the purpose or the value of that comparison is I do not quite know, but in any event the figure he uses is arrived at by the use of a figure which is quite wrong in itself. Then on page 106 he uses the results that he has arrived at on page 105 to compare again with the 16.12 which is the actual basic wage paid in industrial. What he has done, after having got the first table on page 105, which I submit is wrong, is this: he adds up the column and then divides by 9. Having the first column the total is 114.07 and he divides by 4, which is the number of categories dealt with, and he gets 12.66 which is the first figure on page 106. Even if the table itself were correct, and I submit that it is not, I submit that you cannot get the average wage paid in any case by dividing by the number of categories. That certainly ignores the number of [illegible] in the group of [illegible].

Mr. [illegible] : The figure for [illegible], 11.12,

happens to be exactly half the wage paid as given in Exhibit 1323.

Mr. KELLOCK: For mills in Quebec ?

Mr. WHITELEY: It is half the wage paid as given in Exhibit 1323.

Mr. KELLOCK: It is a fortunate accident so far as my friend is concerned; that is all that I can say. My submission is that you simply cannot do that. You may shut your eyes and put your finger on the right spot, but it does not show that the method which my friend has adopted is correct, even if it does happen to coincide in one particular case, because he uses the 42 hour figure, which I submit is quite wrong on any basis. It does not apply to males at all, and he uses it to get at the weekly earnings of males, and takes simply the average of that and compares it with the actual basic wage paid to women in Montreal. Where that gets us I do not know, but my submission is that the conclusions and the computations thus given are erroneous and do not advance matters at all. He gets a long way from where he starts taking the 42 hours a week and taking the nine categories. He gets nine averages. And it is the same for females. He adds the two together and again divides by two, which gives a supposedly arithmetic average, but it ignores entirely the number of males and females employed in each case; and then he adds the Ontario figure so arrived at to the Quebec figure so arrived at and obtains a presumably

however, it is probably not even yet be-
lieved by Sidney Lamb.

Mr. Hockett: Do fills in medice ?

Mr. Voegelin: It is been the more paid to them
in Sidney Lamb.

Mr. Hockett: It is a pleasure to listen so long
as my friend is concerned; that is all that I can say.
My conclusion is that we simply cannot do that.
You can shut your eyes and put your finger on the
right word, but it does not show that the system of
my friend has anything to correct, even if it were
proper to consider in one particular case, because
he uses the my four figure, which I admit is quite
strong on my basis. It does not apply to Indian at
all, and he uses it to get at the weekly averages
of dates, and uses simply the average of that and
compares it with the school basis which is quite
in correct. Where that gets us I do not know, but
my conclusion is that the conclusions and the com-
parisons that Sidney and Lyndhurst have made are not
matters at all. He gets a long way from where he
starts taking the 4x finding a week and making the ni-
ne categories. He gets nine averages. Now it is the
same for females. He adds the two together and
again divides by two, which gives a numerical arith-
metic average, but it ignores entirely the number
of months and females concerned in the average. Now
in order for statistic figures to be physical at all
some figure be assigned to any attribute a numerical

Canadian figure. That computation is erroneous on the assumption he starts it--the 42 hours. But even if that were correct the method he adopts is quite erroneous.

The next matter I want to refer to will be found at page 148, where my friend has a paragraph in the middle of the page.

The COMMISSIONER: You are referring to the paragraph headed Quota of Employment and Quantum of Wages

Mr. KELLOCK: Yes, My Lord. He says:

"Maintaining employment is not all. The quota of employment and the quantum have yet to be considered. Having regard to the agreement to which the country and the industry were parties in 1878 and formally renewed in 1930, having a regard also to the privileged position of the industry one has reason to expect that it will maintain employment to the greatest possible extent, from the double standpoint of the number of employees and of the wage levels, and discharge that obligation more completely than industries operating in a free market."

It has been assumed all the way through this inquiry that the textile industry is on a pedestal by itself, that it enjoys a sort of privileged position that no other industry in the country does enjoy.

The COMMISSIONER: I do not take the language to mean that. The privilege consists in this, that you have deprived the consumer of the right to buy on a

free trade basis, and under protection naturally they have to pay a higher price. But that privilege applies to other industries as well.

Mr. KELLOCK: Quite so, My Lord. But I am pointing to these words particularly:

> "And discharge that obligation more completely than industries operating in a free market."

The COMMISSIONER: I take that to mean any industry that has no protection, if there any such industries.

Mr. McRUER: There are plenty of them.

Mr. KELLOCK: My learned friend says that there are plenty of them. I have been looking for the decision which my friend quotes, not as a matter of law, but to show what Mr. Justice Ellington said as far back as the time that case came up. At the bottom of page 293 of Mr. McRuer's brief the opinion of Mr. Justice Iddington is given in regard to the Weidman and Sharagge case.

(16380 follows)

free trade that, and under prevailing conditions, may have to be a good thing. But that a lottery applies to other industries as well.

Mr. Justice: Quite so, my dear. But I do point-blank to these words particularly:

"Not discourage that only means some monopoly than increasing competition in a free market."

The Chairman: I take leave to read an unanswerable that has no production, if there any and investment.

Mr. Justice: Those are plenty of them.

Mr. [illegible] are plenty of them. I have been looking for the decision which my friend quotes, but as a matter of law, but to show what Mr. Justice Atkinson said as far back as the time that was done up. In the bottom of page 290 of it, Counsel based the opinion of Mr. Justice Atkinson is given in regard to the Malsom and Dowagiac case.

"' It may be asked how can prevention or lessening of competition or attempt thereof be an evil when the fact confronts us that the whole business fabric of Canada is founded on restraint of competition?'"-- referring to tariffs.

My submission, your lordship is -- my point is that I doubt it one can discover an industry in Canada which is operating, as my friend says, in a free market. In the very next paragraph, my lord, my friend says "to what extent has the textile manufacturer, highly protected and controlling the market"--

THE COMMISSIONER: Well, that is so, controlling the textile market.

MR. KELLOCK: My submission, my lord, is --

THE COMMISSIONER: Not 100% in every case; I have the figures.

MR. KELLOCK: Then, on page 144, the next page, my lord, my friend has a paragraph in the middle of the page there, and the argument seems to be there that wages should have gone up after the 1930 tariffs. My friend says that the selling price went down, and they should have gone down in view of the decrease in the consumer's ability to pay. Raw material and interest charges had, of course, to be met, and one would gather from my friend's argument that these extra charges had to come out of the capital resources and perhaps salary decreases, because if the price goes down and raw material and other charges remain the same where is the increase of wages to come out of unless it is not to come out of salary decreases and

"Is not the fabric of demand in question on account of lack of competition or attempt thereof below cost when the fact confronts us that the whole business fabric of demand is founded on restraint of competition?"-- referring to textile.

Mr. Rudkin, your trouble is -- my point is that I doubt if one can discover an industry in Canada which is operating, as my friend says, in a free market in the very next paragraph, my lord, my friend says "to what extent the textile manufacturer, highly protected and controlling the market"--

THE COMMISSIONER: Well, that is so, controlling the textile market.

Mr. Rudkin: My submission, my lord, is --

THE COMMISSIONER: Not 100% in every case; I have the [illegible].

Mr. Rudkin: Then, on page 144, the next page, in 1920, we find [illegible] a government in the [illegible] of the page there, and the argument seems to be there that wages should have gone up after the 1920 tariff. My friend says that the falling price went down, and they should have gone down in view of the decrease in the consumer's ability to pay. Raw material and interest charges had, of course, to be met, and one would make them by [illegible] [illegible] extra charges had to come out of the capital resources and perhaps salary decreases, because if the price came down and raw material and other charges remain the same where is the increase of wages to come out of? It is not so much as it seems [illegible] and

capital, and my friends returns to the charge there in the last sentence in that paragraph that there was a reduction in employment since 1930. Now, I have already dealt with that, my lord. My submission is that charge ought never to have been made. The evidence is quite the contrary, and there is another aspect of that which I should like to mention now because it underlies the argument of both my friends all the way through.

The argument is, my lord, either stated or assumed that in 1930 the textile industry asked for increased protection and got it and that nobody else got any benefit from that except the industry itself, which would be the shareholders. Now, of course, that is quite erroneous because, in the first place, employment was increased, and the very object, the primary object, in my submission, of the increase in tariffs which was granted in 1930, was for that very purpose. My friends have set out in their briefs the language of the Prime Minister which states that very thing, that those tariffs were at an emergency time to provide additional employment when the governments, both Dominion and Provincial, were at their wits ends to take care of the rising unemployment and rising relief costs, and the primary object of those 1930 tariffs was to provide additional employment and they were successful.

MR. McRUER: That is not true in the cotton industry.

MR. KELLOCK: My friend was not here, and my friend apparently has not read the evidence. My friend won't do me the compliment of reading my brief. If my friend

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equitably, and on friendly terms. The whole thing is
an item entirely in that economical view that has a
tendency to equipment a new idea. Now, I have already
dealt with that, my lord. The membership in the Guild
ought never to have been made. The evidence in this
and arbitrary, and there is another reason of that which
I should like to mention has because it underlies the
economy of such of friends all the way through.

The argument is, my lord, that when asked to increase
that in 1920 the textile industry asked for increased
protection and yet it was that nobody else got any
benefit from that except the industry itself, which
proves its parsimonious. Now, of course, that is
quite a misunderstanding. In the first place, conditions
was increased, and the very object, the primary object,
in my submission, of the increase in textile union was
granted in 1920, was for that very purpose. My friend
have set out in their briefs the language of the trade
relations union which was very wise. It's those textile
were at an emergency time to provide additional
that were the protection, with Canada and Australia
from at their wise and in view of the state
employment and wages relief costs, and the primary object
of those 1920 textile was to provide additional employ-
ment and they were successful.

MR. McPHEE: That is not true in the cotton industry.

MR. HAMILTON: My friend was not here, and my friend
conveniently has not read the evidence. My friend won't
do so the unfairness of quoting it twice. If my frie

reads my factum the evidence is set out there and analyzed, and it does establish that very thing.

MR. McRUER: In the cotton industry?

MR. KELLOCK: Yes.

MR. McRUER: Dominion Textile, their employment was down.

MR. KELLOCK: My friend is talking about a particular thing. I am speaking about the industry. The promise was made by the industry and the promise was carried out by the industry. Now, when my friend refers to the cotton industry, as your lordship recalls, there was a decline in the index between 1930 and 1933, but by 1934, even in the cotton industry, the whole ground had been recovered and exceeded. The index in 1930 was 84.6, and by 1933 it had declined to 75, but the following year it had recovered all the lost ground and gone up to 88.3, which is approximately four points above the 1930 figure.

MR. McRUER: The number of employees in the Dominion Textile Company was less in 1935 than in 1934.

MR. KELLOCK: I am not talking about the Dominion Textile Company. I am talking about the cotton industry as a whole.

MR. McRUER: I don't know what you have got included in that.

MR. KELLOCK: I have got all the companies and all the employees in the cotton industry, and we are talking about the industry. We are not speaking about an individual company. My submission, my lord, is

made by Textum the evidence is set out there and analyzed, and it does establish that very thing.

MR. McMURRY: In the cotton industry?

MR. MALLOCK: Yes.

MR. McMURRY: Dominion Textile, their employment was down.

MR. MALLOCK: My friend is talking about a particular thing. I am speaking about the industry. The promises made by the industry and the promise was carried out by the industry. Now, when my friend refers to the cotton industry, as your Lordship readily, there was a decline in the index between 1920 and 1924, but by 1924, even in the cotton industry, the whole ground had been recovered and exceeded. The index in 1920 was 84.6, and by 1924 it had declined to 75, but the following year it had recovered all the lost ground and gone up to 88.3, which is approximately four points above the 1920 figure.

MR. McMURRY: The number of employees in the Dominion Textile Company was less in 1928 than in 1924.

MR. MALLOCK: I am not talking about the Dominion Textile Company. I am talking about the cotton industry as a whole.

MR. McMURRY: I don't know what you have got included in that.

MR. MALLOCK: I have got all the companies and all the employees in the cotton industry, and we are talking about the industry. We are not speaking about an individual company. My submission, my Lord, is

that all the way through my friend's argument these 1930 tariffs are set up as though they had been asked for by my clients, were obtained and they resulted in benefit to my clients and nobody else. Now, my submission is the primary purpose was to benefit the country by increasing employment, and that purpose was attained, and the country got value for these increases in the way of increased employment in the industry itself, and, of course, in maintaining employment in the other industries which impinge upon the textile industry all the time, by purchases from the other industries, and in the tremendous millions of dollars which were paid for wages since 1930 have maintained and increased purchasing power in that time, and that one cannot look at the increase in tariffs which was granted, and which were admittedly made in 1930, and simply look at it from the standpoint of what that meant to the textile industry, and say that the industry itself benefited and nobody else did. My submission is the purpose of it was attained, and the country itself benefited, and in the illustrations which I gave your lordship on Friday there were many companies in the industry which did not benefit at all. They continued to make losses.

So far as any decrease in nominal or actual wages in the period, my friend refers to that, and I just cover the ground which is comparatively small, and as compared with what took place in the United States was insignificant. My instructions are that

that all the way through my friend's speech these 1930 tariffs are set up as though they had been asked for by my clients, were obtained and they resulted in benefit to my clients and nobody else. Or, to analyze it, the tariff required was to benefit the country by increasing employment, and that purpose was attained, and the country got value for those increases in the way of increased employment in the industry itself, and, of course, in maintaining employment in the other industries which impinge upon the textile industry all the time, by purchases from the other industries, and in the tremendous millions of dollars which were paid for wages since 1930 have maintained and increased purchasing power in that time, and that one cannot look at the increase in tariffs which was granted, which were admittedly made in 1930, and simply look at it from the standpoint of what that meant to the textile industry, and say that the industry itself benefited and nobody else did. My submission is the purpose of it was attained, and the country itself benefited, and in the illustrations which I gave your lordship on Friday there were many companies in the industry which did not benefit at all. They continued to make losses.

So far as any decrease in nominal or actual wages in the period, my friend refers to that, and I just cover the ground which is comparatively small, and as compared with what took place in the United States was insignificant. My instructions are that

the same large recession took place in Great Britain in the same period; I cannot give your lordship the figures but in Canada they were comparatively small and were more than compensated by increased purchasing power in that time.

Then, if I may refer your lordship to page 148 of my friend's brief, the second paragraph down, the first two sentences; I am not criticizing but I want to refer to this because I think it is an admission which my friend, Mr. McBuer, in his argument throughout his brief entirely overlooks. My friend, Mr. Beauregard, says:

> "It is destructive competition that maintains wages at a low level. When responsibility does not rest with foreign competition, it lies with domestic competition waged at the expense of the worker"--

Now, Ihave occasion, my lord, to refer to that later on.

THE COMMISSIONER: What competition is Mr. Beauregard referring to there, competition in the selling prices of the articles?

MR. KELLOCK: Yes, my lord, I assume so.

MR. BEAUREGARD: Competition as to the lowering of the wages.

THE COMMISSIONER: You have two different things in mind.

MR. KELLOCK: Well, I don't follow my friend, my lord.

the same large recession took place in Great Britain in the same period; I cannot give your lordships the figures but in Germany they were comparatively small and were more than compensated by increased purchasing power in that time.

Then, if I may refer your lordships to page 148 of my friend's brief, the second paragraph down, the first two sentences; I am not criticising but I want to refer to this because I think it is an admission which my friend, Mr. Rowlatt, in his argument throughout his brief entirely overlooks. My friend, Mr. Beaumont, says:

"It is destructive competition that maintains wages at a low level. Even reasonability does not rest with foreign competition, it lies with domestic competition based at the expense of the worker."

Now, I have occasion, my lord, to refer to that later on.

Now consideration that Mr. Beaumont referred relating to there, competition in the selling prices of the articles?

Mr. Justice Sankey: Yes, my lord, I assume so.

Mr. Beaumont: Competition as to the lowering of the wages.

The Commissioner: You have two different things in mind.

Mr. Beaumont: Well, I shall deal in time, my lord.

My friend says it is destructive competition and the competition --

THE COMMISSIONER: I do not understand it to mean the competition that you are talking about.

MR. BEAUREGARD: The competition that is referred to in the evidence of Abbe Cote. It is a cut throat game by all the companies to see which will pay the lowest price. That is why he asked for a minimum. He asked for a floor under which the company will not go.

MR. McRUER: The company in the labour market, not in the fabric market.

THE COMMISSIONER: That is, going around from place to place, going where there are more people and larger families.

MR. KELLOCK: My lord, once an industry is established in a particular place --

THE COMMISSIONER: Anyhow, that is the competition Mr. Beauregard is referring to, and there is no use meeting it by talking about another kind of competition.

MR. KELLOCK: My submission about it is, if that is what my friend means, and I accept that, my submission is that is non-existent, that if an industry is established it is established. Its capital is there and it cannot pick up and go some place else.

THE COMMISSIONER: They did. One plant moved from Verdun to Sherbrooke.

MR. KELLOCK: That was one mill.

MR. McRUER: They closed seven or eight mills in order to gather them in these large areas where the

my friend says it is destructive competition and the competition --

THE COMMISSIONER: I do not understand it to mean the competition that you are talking about.

MR. MACDONALD: The competition that is referred to in the evidence of Abbe Cote. It is a cut throat case by all the companies to see which will pay the lowest price. That is why he asked for a minimum. He asked for a floor under which the company will not

MR. McKEEN: The company in the labour market, not in the fabric market.

MR. MACDONALD: Yes I, going around from place to place, going where there are more people and larger families.

MR. MELLOR: My lord, once an industry is established in a particular place --

THE COMMISSIONER: Anyhow, that is the competition Mr. Beauregard is referring to, and there is no use meeting it by talking about another kind of competition.

MR. MELLOR: My submission about it is, if that is what my friend means, and I assert that, my submission is that is non-existent, that if an industry is established it is established. The capital is there and it needs plenty and no some place else.

THE COMMISSIONER: Does all.

MR. MELLOR: Does not come from Yarmouth to Lunenburg.

THE COMMISSIONER: They are one mill.

MR. MELLOR: They almost have to start mills in order to produce them in Nova Scotia Nova Scotia is

lowest market existed.

MR. KELLOCK: It is overstating the case to say that happened merely on account of lower wages. A company which owns several mills will consolidate them in one or two locations as opposed to the original five or six for the purpose of all the benefits which come from having it all under one roof.

THE COMMISSIONER: Is not this one of the benefits that they have in mind?

MR. KELLOCK: I think so, in that case; that is one.

THE COMMIS IONER: What you are doing now is finding fault with Mr. Beauregard's statement, but there it is.

MR. KELLOCK: The only thing I want to say about it is that sort of competition must be very very limited and only open to a company which has one or more plants in different places. It is not open to an industry which has one plant in one place. It cannot abandon its capital expenditure in one place and go off to some place else, and if one takes my friend's language and applies it to competition in selling prices it is absolutely true, in my submission, 100%.

THE COMMISSIONER: What do you say about selling prices?

MR. KELLOCK: If you apply--

THE COMMISSIONER: You say there is destructive competition in selling prices now?

MR. KELLOCK: I don't know about that, but I am going to refer your lordship --

THE COMMISSIONER: I have no evidence of it.

lowest market existed.

MR. ANDERSON: It is overstating the case to say that happened merely on account of lower wages. A company which owns several mills will consolidate them in one or two locations as opposed to the original five or six for the purpose of all the benefits which come from having it all under one roof.

THE COMMISSIONER: Is not this one of the benefits that they have in mind?

MR. ANDERSON: I think so, in that case; that is one.

THE COMMISSIONER: What you are doing now is finding fault with Mr. Beauregard's statement, but there it is.

MR. ANDERSON: The only thing I want to say about it is that sort of competition must be very very limited and only open to a company which has one or more plants in different places. It is not open to an industry which has one plant in one place. It cannot abandon its capital expenditure in one place and go off to another place and if one takes my friend's language and applies it to competition in selling prices it is absolutely ludicrous, in my submission, sir.

THE COMMISSIONER: What do you say about selling prices?

MR. ANDERSON: If you say there is destructive competition in selling prices --

THE COMMISSIONER: I don't know about that, but I am going to take your statement.

MR. ANDERSON: I don't know about that, but I am

MR. KELLOCK: But there is evidence, my lord, that in the years 1932, 1933 and 1934 in certain branches of the industry there was destructive competition and destructive selling prices; in fact, I am going to refer your lordship to that specifically a little later on.

Then, my lord, the last thing I want to mention in my friend's brief is on page 166, where my friend sets out the evidence dealing with a letter which was sent by Mr. Berry to Mr. Lundy, and includes a statement made by the Dominion Textile Company Limited. Now, that has no application beyond that particular company. The evidence is that Mr. Lundy --

THE COMMISSIONER: What did Mr. Lundy do with that letter?

MR. KELLOCK: Nothing, my lord, so far as I know.

THE COMMISSIONER: It was not published any place else.

MR. KELLOCK: He simply was in Mr. Berry's office, saw the article and asked for a copy.

MR. McRUER: The chairman of the board of Penmans is the same man as the chairman of the Dominion Textile Company.

THE COMMISSIONER: The chairman is what?

MR. KELLOCK: What significance has that?

MR. McRUER: The chairman of the board of Penmans is Sir Charles Gordon.

MR. KELLOCK: I don't see the significance of that. The evidence is Mr. Lundy was in Mr. Berry's

MR. KELLOCK: But there is evidence, my lord, that in the years 1930, 1932 and 1934 in certain branches of the industry there was destructive competition and destructive selling prices; in fact, I going to refer your lordship to that specifically a little later on.

Then, my lord, the last thing I want to mention in my friend's brief is on page 166, where my friend sets out the evidence dealing with a letter which was sent by Mr. Berry to Mr. Ready, and includes a [illegible] made by the Dominion Textile Company Limited. Now, that has no application beyond that particular [illegible] The evidence is that Mr. Ready --

THE COMMISSIONER: What did Mr. Ready do with t[illegible] letter?

MR. KELLOCK: Nothing, my lord, so far as I know.

THE COMMISSIONER: It was not published any pla[illegible] else.

MR. KELLOCK: He simply saw in Mr. Berry's [illegible] saw the article and asked for a copy.

MR. McPHEE: The chairman of the board of [illegible] is the chairman of the Dominion Textile Company.

THE COMMISSIONER: The chairman is what?

MR. KELLOCK: What significance has that?

MR.McPHEE: The chairman of the board of [illegible] is Sir Charles Gordon.

MR. KELLOCK: I don't see the significance of this. The evidence is Mr. Ready was in Mr. Berry's

office, saw the article there and asked Mr. Berry to send it to him. He sent it to him. That is the beginning and end of it. It is not the view of anybody else except the writer and was never adopted by anybody else so far as the industry was concerned. Your lordship will find that evidence at pages 9743 and 9744.

THE COMMISSIONER: Pages what?

MR. KELLOCK: 9743 and 9744.

MR. BEAUREGARD: Page 167 I think fairly explains the position.

MR. KELLOCK: 167?

MR. BEAUREGARD: 167.

THE COMMISSIONER: That is the evidence at Sherbrooke.

MR. BEAUREGARD: No, my lord, I am referring to the fact of the notice in the newspaper. I say:

> "This refusal to enter into conversations is all the more to be deplored as it comes from the largest employer, and the fact it has been communicated to the other employers by the Textile Institute's secretary indicates an intention to have the same viewpoint adopted throughout the textile industry."

There was no reason, as far as I can see, why this letter should be communicated to Mr. Lundy who was with Penmans in Ontario. That was a notice that was made, expressly fabricated for the Sherbrooke people, and conveyed to them through the medium of the press. There was no reason to release that news from Sherbrooke

office, saw the article there and asked Mr. Berry to send it to him. He sent it to him. That is the implication one has of it. It is not the view of anybody else except the writer and was never adopted by anybody else so far as the industry was concerned. Your Lordship will find that evidence at pages 9745 and 9744.

THE COMMISSIONER: Pages what?

MR. CHALDER: 9745 and 9744.

MR. BRADBURN: Page 147 I think fairly explains the situation.

MR. CHALDER: 147?

MR. BRADBURN: 147.

THE COMMISSIONER: That is the evidence at Aberbrooke.

MR. BRADBURN: No, my lord, I am referring to the fact of the notice in the newspaper. I say "this refusal to enter into conversations is all the more to be deplored as it comes from the largest employer, and the fact it has been communicated to the other employers by the Textile Institute's secretary indicates an intention to have the same viewpoint adopted throughout the textile industry."

There was no reason, so far as I can see, why this letter should be communicated to Mr. Ramsay who was with Fermans in Ontario. That was a notice that was made, personally irritating for the Commissioner Ramsay and referred to in the strongest terms on the evening. There was no reason in reason why that letter should

to Penmans except to have the people there adopt this point of view. I cannot see any other reason. If there is I will be glad to hear of it.

MR. KELLOCK: This may be a faulty translation on page 167, my lord, the part my friend just read -- "and the fact it has been communicated to the other employers"-- plural; there is no evidence of that. The only evidence is, as I mentioned to your lordship, Mr. Lundy was in Mr. Berry's office and asked him to send him a copy. It got to no other employers.

MR. BEAUREGARD: He was interested to know.

MR. KELLOCK: That is a wrong translation, isn't it?

MR. BEAUREGARD: I don't know.

MR. McRUER: It was sent out by Mr. Berry as sort of a circular.

MR. KELLOCK: It was not, excuse me, that is not the evidence at all.

MR. McRUER: Went out from Mr. Berry's office; it didn't come directly from Dominion Textile as something to tell Penmans, but came from the office of the secretary of the association.

MR. KELLOCK: I have just explained what the evidence is; Mr. Lundy was in Mr. Berry's office, saw the clipping there and asked him to send it. I had better read the evidence in view of the --

THE COMMISSIONER: Yes, read the evidence.

MR. KELLOCK: -- of the importance my friends put upon this.

THE COMMISSIONER: Whose evidence is this?

to Tuesday except to have the people there about this point of view. I cannot see any other reason. If there is I will be glad to hear of it.

MR. ARMOUR: This may be a faulty translation — page 187, my lord, the part we raised just read — "and the fact it has been communicated to the other employers" — plural; there is no evidence of that. The only evidence is, as I mentioned to your lordship, Mr. Murphy was in Mr. Berry's office and handed him a copy. It got to no other employers.

MR. BLAGBOROUGH: He was interested to know.

MR. ARMOUR: That is a wrong translation, isn't it?

MR. MACDONALD: It's there.

MR. McMURR: It was sent out by Mr. Berry on behalf of a circular.

MR. ARMOUR: It was not, excuse me, that is not the evidence at all.

MR. ALLEN: Just so: from Mr. Berry's office; it didn't come directly from Brantford Vehicle or something to tell Fenwick, but came from the office of the secretary of the association.

MR. ARMOUR: I have just explained what the evidence is; Mr. Murphy was in Mr. Berry's office, and the clerk there had asked him to send it. I had better read the evidence in view of the —

MR. CHAIRMAN: Yes, read the evidence.

MR. ARMOUR — at the top of the page in Tuesday's proceedings.

THE CHAIRMAN: Where evidence is what?

MR. KELLOCK: The evidence of Mr. Lundy, at page 9743, line 28, my friend, Mr. McRuer, examining--

"Q. I say do you know why Mr. Berry took the trouble to send that declaration of policy to you?

5 A. What date is it?

Q. April 21st? A. I think I was in the Montreal office of the Association, which I often visit, and I don't recall, but possibly there was a copy of this La Tribune or the subject may have

10 been mentioned.

Q. There might have possibly been a lot of things. I am asking for your recollection? A. I was coming to that --

15 Q. Do you remember anything about it? Do you remember seeing it about there? Don't let us get into possiblies; I want your recollection about it. A. I cannot recall how the subject came up. It may have been by looking at the paper and

20 it may have been in the course of conversation. I expressed an interest in the matter and asked either for a copy of the paper or a translation". Now, that is the whole evidence. There is no evidence of this being sent out as a circular letter. There

25 is no evidence of it being sent out to anybody but Mr. Lundy, and only at Mr. Lundy's request because he saw it there when he was in the office.

My lord, I want to come back to my own factum, if I may, at section "E", the section dealing with

30 Canadian Textile Trade.

MR. SULLIVAN: The evidence of Mr. Hardy, at page 2746, line 28, my friend, Mr. Morant, examining--

"Q. I say to you again why Mr. Berry took the trouble to send that declaration of policy to Hardy?

A. What date is it?

Q. April 22nd? A. I think I was in the National Police at the [illegible], when I [illegible] visit, and I don't recall, but possibly there was a copy of this to Thirsme or the subject may have been mentioned.

Q. There must have possibly been a lot of things I am asking for your recollection? A. I was [illegible] in [illegible]

Q. Do you remember anything about it? Do you remember seeing it about then? Don't let me [illegible]

A. [illegible]

Q. It may have been by looking at the paper and it may have been in the course of conversation. I expressed an interest in the matter and asked either for a copy of the paper or a translation."

Now, that is the whole evidence. There's no evidence of this being sent on a [illegible]. There is no evidence of it being sent out to anybody but Hardy, and only at Mr. Hardy's request because he was at there when he was in the office.

My Lord, I need to read [illegible]

If I may, at section "M", the section dealing with [illegible]

THE COMMISSIONER: Section "E"?

MR. KELLOCK: Yes, my lord.

" The policy of the Canadian Government since in or about the year 1897 has been to provide a preference to British goods in the Canadian market. This policy reached its high point in 1932 when the British-Canadian trade agreement was negotiated and signed. The underlying raison d'etre for this agreement was to transfer to British producers and exporters as large as possible a share of the business at that time being done in the Canadian market by foreign producers and exporters."

Now, I emphasize that, my lord, because my submission is that was the basic reason for what took place in 1932 and it only emphasizes the policy which had been initiated in 1897. Now, the results since 1932 are set out in the table that follows. In 1932 the total imports from Great Britain were $106,371,000 while imports of textiles were $30,549,000, or textiles were 28.72% of the total. By 1935, during the years following the Ottawa agreements, the imports had increased to $111,682,000 and textiles had increased to $36,537,695; they had gone up to 32.71%. The increase of 1935 over 1932 in total was $5,310,711, but in textiles was $5,987,759 so that the increase in textiles was more than the total increase in the imports, and amounted to 112.74%.

THE HONOURABLE MEMBER

MR. MALCOLM: Yes, my lord.

" The policy of the Canadian Government since in or about the year 1897 has been to provide a preference to British goods in the Canadian market. This policy reached its high point in 1922 when the British-Canadian trade agreement was negotiated and signed. The underlying raison d'etre for this agreement was to transfer to British producers and exporters as large as possible a share of the business at that time being done in the Canadian market by foreign producers and exporters."

Now, I emphasize that, my lord, because my simplication is that was the basic reason for what took place in 1932 and it only emphasizes the policy which had been initiated in 1897. Now, the results since 1922 are set out in the table that follows. In 1922 the total imports from Great Britain were $106,371,000 while imports of textiles were $30,849,000, or textiles were 28.7% of the total. In 1929, during the prosperity industries had grown enormously, the imports had increased to $111,888,000 and textiles had increased to $26,327,895; they had gone up to 23.7%. The increase of 1929 over 1922 in total was $5,510,711, but in textiles was $4,527,715 - that has increased in textiles and does the total increase in the imports and amounted to 114.7%.

Now, comparing 1932 and 1936; in 1932 the imports were exactly the same as to total and as to textiles, but by 1936 the increase had gone up to $117,874,000 and textiles $40,594,719, or 34.44%. The increase in total of 1936 over 1932 was $11,503,000 and in textiles $10,044,000, or an increase of 87.32%.

MR. McRUER: I do not understand that 112%; what is that 112% of?

MR. KELLOCK: 112%, that is the increase in textiles.

THE COMMISSIONER: There was a falling off in some of the other importations and an increase in textiles.

MR. McRUER: There wasn't 112% increase in textiles.

MR. KELLOCK: The point is --

MR. McRUER: Oh, I see.

MR. KELLOCK: The increase in textiles was more than the increase in the total imports.

" The figures underlined in the above table indicate that between 1932 and 1935 the Canadian textile market, while accounting in 1935 for 32.7% of the total imports from Great Britain, was responsible for 112.7% of the increase in trade; in other words, that the increase in importations of textiles from Great Britain was more than the total increase of all importations from Great Britain to Canada. Between 1932 and 1936 the Canadian textile market, while accounting in 1935 for 34.4% of the total of all imports from Great Britain"--

Yes, comparing 1928 and 1935; in 1928 the imports were exactly the same as to total and as to textiles, but by 1935 the increase had gone up to $117,874,000 and textiles $66,394,719, or 56.4%. The increase in total of 1935 over 1928 was $11,000,000 and in textiles $10,044,000, or an increase of 67.4%.

MR. McBRIDE: I do not understand that 117%; what is that 117% of?

MR. McLEOD: 117%, that is the increase in textiles.

THE COMMISSIONER: There was a falling off in some of the other importations and an increase in textiles.

MR. McBRIDE: There wasn't 117% increase in textiles.

MR. McLEOD: The point is --

MR. McBRIDE: Oh, I see.

MR. McLEOD: The increase in textiles was more than the increase in the total imports.

The figures mentioned in the above table indicate that between 1928 and 1935 the Canadian textile market, while [illegible] in 1928 for 24.7% of the total imports from Great Britain, was responsible for 113.7% of the increase in trade; in other words, that the increase in importations of textiles from Great Britain [illegible] Less than [illegible] of Canada. [illegible] and 1928 the Canadian textile market, while [illegible] in 1928 for [illegible] all imports from Great Britain --

That should be 1936,- "while accounting in 1936".

THE COMMISSIONER: Just a minute; where is that?

MR. KELLOCK: The third line -- I am reading the last sentence, "between 1932"--

THE COMMISSIONER: 1935 should be 1936.

MR. KELLOCK: Yes, my lord.

"--while accounting in 1936 for 34.4% of the total of all imports from Great Britain, was responsible for 87.32% of the increase in imports".

MR. McRUER: Does this include those textiles that are free of duty?

MR. KELLOCK: Yes.

MR. McRUER: Like tops that are raw material for the textile trade in Canada?

MR. KELLOCK: All imports; there is nothing mysterious about the table. It is all imports compared with all imports of textiles.

MR. McRUER: If you restrained the flow it would be an injury to the textile industry.

THE COMMISSIONER: Does anybody know if we eliminated the goods that are free and take those that are dutiable, what would the result be of the importations?

MR. KELLOCK: My lord, I think I am going to give you some more information on that as I come to it.

THE COMMISSIONER: Pardon?

MR. KELLOCK: I think I have some more information on that as I come to it.

" If the balance of trade between Great Britain and Canada is to be examined, it should be borne

That would be 1938.- "While accounting in 1938".

THE COMMISSIONER: Just a minute; where is that?

MR. KELLOCK: The third line -- I am reading the last sentence, "between 1938"--

THE COMMISSIONER: That should be 1938.

MR. KELLOCK: Yes, my lord.

"--while accounting in 1938 for 34.4% of the value of all imports from Great Britain, was responsible for 87.33% of the increase in imports".

Q. Now then with regard to these textiles, are free of duty?

MR. KELLOCK: Yes.

MR. McKEN: Did you say that are raw material for the textile trade in Canada?

MR. KELLOCK: All imports; there is nothing mysterious about the table. It is all imports compared with all imports of textiles.

MR. McKEN: If you restricted the flow it would be an injury to the textile industry.

THE COMMISSIONER: Does anybody know if we eliminated the goods that are free and take those that are dutiable, what would the result be of the legislation?

MR. KELLOCK: My lord, I think I am going to get more information on that as I move in it.

THE COMMISSIONER: Perhaps?

MR. KELLOCK: I think I have more information on that as I come to it.

If the balance of trade between Great Britain and Canada is to be examined, it should be done

"in mind that Great Britain should never expect to sell in Canada within approximately one hundred million dollars of the value of the goods she buys in Canada because annual invisible Canadian payments due Great Britain from Canada approximates this figure".

THE COMMISSIONER: Just a minute now; alright.

MR. KELLOCK: Then, I am dealing with wool, my lord, which my friend just mentioned.

" Of the total imports from Great Britain of textile fibres and their products of $39,261,027 in the calendar year 1935, wool and its products, and knit goods, amounted to $19,502,307 or approximately 50% in value of the total textile imports from Great Britain. Moreover, the woollen and knitting industry in Canada either through purchases from Great Britain for further manufacture, or the import of goods in competition with its products, accounts for over 16% of the total imports into Canada from Great Britain."

That is 50% of the total textile imports and 16% of the total imports.

" Canada in the calendar year 1935 not only bought from Great Britain 13,500,000 square yards of woollen and worsted cloth, but in addition 1,500,000 yards of flannels and delaines, 9,400,000 pounds of wool products, 2,500,000 pounds of yarn, and 5,500,000 pounds of wool, Canada being the best customer Great Britain

"In what that there private [illegible] [illegible] to well in Canada which [illegible] [illegible] million dollars of the value of the goods she buys in Canada because annual invisible [illegible] payments due Great Britain from Canada approximate to this figure".

THE COMMISSIONER: Just a minute now; alright.

MR. ARMSTRONG: Then, I am dealing with wool, my lord, which my friend just mentioned.

" Of the total imports from Great Britain of textile fibres and their products of $[illegible],[illegible],[illegible] in the calendar year 1935, wool and its products and knit goods, amounted to $[illegible],[illegible],[illegible] or approximately 30% in value of the total textile imports from Great Britain. Moreover, the woollen and knitting industry in Canada either through purchases from Great Britain for further manufacture or the import of goods in competition with its products, accounts for [illegible]% of the total imports into Canada from Great Britain."

That is 30% of the total textile imports and [illegible]% of the total imports.

" Canada in the calendar year 1935 not only bought from Great Britain [illegible],[illegible],000 square yards of woollen and worsted cloth, but in addition [illegible],500,000 yards of flannels and delaines, [illegible],400,000 pounds of wool products, [illegible],300,000 yards of [illegible], and [illegible],500,000 pounds of wool, [illegible] [illegible] [illegible] [illegible]

"has had for woollen and worsted cloth, either inside or outside the Empire, in each of the five years ending 1935. The result has been that manufacturers of woollen and worsted cloth in Great Britain in the calendar year 1935 obtained 40% of the Canadian market for these goods as against 58% obtained by the Canadian cloth manufacturers. If Great Britain were to get a greater share of the Canadian market for manufactured woven goods a decline would take place in the imports from Great Britain of wool, wool tops and yarns.

The result of the table at the foot of page 5 of Exhibit 640 shows that in 1932 foreign producers obtained 7.3% of the Canadian market for woollen and worsted cloth as against the British share of 35.5% and the Canadian share of 57.2%, while in 1935 the percentages are, - Foreign 2.1%, British 39.7%"-- that is the 40 I have used in the preceding paragraph -- "--Canadian 58.2%.

The import trade in wool and its products in the calendar year 1934 may be summarized as follows:-

(a) Imports of wool not further processed than combed from Great Britain $5,312,381; other Empire countries $3,027,232; foreign countries $77,977. Of this import wool tops, a semi-manufactured raw material, amounted to $3,541,967 from Great Britain and $1,280,899 from Australia.

has had for woollen and worsted cloth, either inside or outside the Empire, in each of the five years ending 1926. The result has been that manufacturers of woollen and worsted cloth in Great Britain in the calendar year 1926 obtained 40% of the Canadian market for these goods as against 58% obtained by the Canadian cloth manufacturers. If Great Britain were to get a greater share of the Canadian market for manufactured woven goods a decline would take place in the imports from Great Britain of wool, wool tops and yarns.

The result of the table at the foot of page 5 of Exhibit 640 shows that in 1923 foreign countries obtained 3.3% of the Canadian demand for woollen and worsted cloth as against the British share of 58.5% and the Canadian share of 37.2%, while in 1925 the percentages are, - Foreign 2.1%, British 58.7%"-- that is the 40% I have used in the preceding paragraph --

"--Canadian 39.2%.

The import trade in wool and its products in the calendar year 1924 may be summarized as follows:-

(a) Imports of wool and its products imported from Great Britain £4,312,481; other Empire countries £4,027,882; foreign countries £77,777. In this import trade, a considerable proportion of material, amounting to £2,841,041 came from Australia and £1,209,223 from Canada.

"(b) Imports of wool yarn into Canada:

Great Britain - $2,705,683.

Foreign countries - $54,664.

(c) Imports of wool cloth for"-- that includes woollen and worsted cloth --

"--for the fiscal year 1935:

Great Britain -$8,241,807.

Foreign countries $359,171.

In the first seven months of 1936 exports of wool, tops, yarns and cloth from Great Britain to Canada increased over the same seven months of 1935, as is shown in Exhibit 640. Exports of raw wool increased from 2,541,000 to 2,712,000 pounds; wool tops increased from 5,305,000 to 5,979,000 pounds; yarns increased from 1,404,000 to 1,581,000 pounds; and wool cloth increased from 7,892,000 to 10,013,000 square yards, an increase of 2,121,000 square yards".

That is for seven months.

"In the first seven months of 1936 Canada purchased from Great Britain a greater value of semi-manufactured and manufactured wool than was purchasedf from Great Britain by any other country in the world. These purchase figures include wool tops (no raw wool), yarns, cloth and carpets, and are as follows:

Canada	2,221,380	pounds sterling
Germany	1,649,523	" "
Argentine	1,272,908	" "
U. of S. Africa	1,211,761	" "
Denmark	1,010,263	" "

and no other country purchased up to

"(b) Imports of wool yarn into Canada:

Great Britain - $2,705,382.

Foreign countries - $44,224.

(c) Imports of wool cloth for"-- the trimmings woollen and worsted cloth --

"--for the fiscal year 1928:

Great Britain -$[illegible],

Foreign countries $830,171.

In the first seven months of 1929 exports of wool, tops, yarns and cloth from Great Britain to Canada increased over the same seven months of 1928, as is shown in Exhibit 640. Imports of raw wool increased from 1,321,000 to 2,724,000 pounds; wool tops increased from 5,208,000 to 5,279,000 pounds; yarns increased from 1,404,000 to 1,381,000 pounds; and wool cloth increased from 7,348,000 to 10,012,000 square yards, an increase of [illegible] square yards".

That is for seven months.

"In the first seven months of 1929 Canada purchased from Great Britain a greater value of semi-manufactured and manufactured wool than any PRIMARY from Great Britain to any other country in the world. These purchase figures include wool tops (no raw wool), yarns, cloth and serges, and are as follows:

Canada	2,321,000 pounds sterling
Germany	1,048,000 "
Australia	1,[illegible] "
[illegible]	1,[illegible] "
Belgium	1,[illegible] "

and the value [illegible] PRIMARY PRODUCTS to the

"1,000,000 pounds sterling worth from Great Britain".

Then, I deal with the free imports.

MR. McRUER: Excuse me, might I ask in reference to the imports of woollen and worsted cloth, or you have got wool cloth, the increase from 7,892,000 to 10,013,000 --

MR. KELLOCK: Where, paragraph seven?

MR. McRUER: The middle of paragraph seven.

MR. KELLOCK: Yes.

MR. McRUER: Would any part of that wool cloth be free of duty or would it all be dutiable?

MR. KELLOCK: Both.

MR. McRUER: That includes the light stuff, doesn't it? What is the weight of it?

MR. KELLOCK: Four to six ounces.

MR. McRUER: Four to six ounces.

MR. KELLOCK: It doesn't, I am told, include flannelettes and delaines.

MR. HALLAM: That is a very heavy import; you cannot get the figures in this way.

MR. KELLOCK: Paragraph eight, dealing with free imports from Great Britain.

"Under Canadian tariffs in existence prior to 1922 no cloth entered into Canada from Great Britain free of duty. In the calendar year 1935 under Tariff Items 554-C, 554-F, 554-A, 556 and 556-A, the amount of cloth which entered Canada free of duty from Great Britain was 527,568 pounds, which is estimated to represent approximate-

"1,000,000 pounds sterling worth from Great Britain".

Then, I deal with the free imports.

MR. McPUFF: Excuse me, might I ask in relation to the imports of woollen and worsted cloth, or you have not used them, the increase from 7,000,000 to 10,012,000 —

MR. HALLOCK: Yes.

MR. McPUFF: Would any part of that wool cloth be free of duty or would it all be dutiable?

MR. HALLOCK: None.

MR. McPUFF: That includes the light stuff.

MR. HALLOCK: Four to six ounces.

MR. McPUFF: Four to six ounces.

MR. HALLOCK: It doesn't, I am told, include flannelettes and delaines.

MR. HALLAM: That is a very heavy import; you cannot get the figures in this way.

MR. HALLOCK: Paragraph eight, dealing with free imports from Great Britain.

"Under Canadian tariffs in existence prior to 1932 no cloth entered into Canada from Great Britain free of duty. In the calendar year 1931 under tariff items 206-C, 206-D, 206-E and 206-F, the amount of duty collectable from all free Great Britain was $2,[illegible]; which is equivalent to [illegible]

"ly 2,221,339 square yards of cloth. In regard to Tariff Item 554 under which cloths weighing from 4 to 6 oz. in the grey are imported to Canada from Great Britain, the Tariff Board in their Report Ref. 1, said, 'The British woollen textile industry enjoys a virtual monopoly of the Canadian market for these fabrics'. The imports into Canada under this item amounted to 914,617 pounds, of which 901,112 pounds came from Great Britain. The imports into Canada from Great Britain represent approximately 2,787,404 square yards.

In his report on Economic and Commercial Conditions in Canada, 1935-1936, by His Majesty's Senior Trade Commissioner in Canada and Newfoundland, he says regarding wool cloth: 'Canadian and United Kingdom mills are in competition in this market in practically the entire range of cloths. The U.S.A. and other foreign competition is negligible'". That, of course, is subject to the four to six ounce cloth in which Great Britain has a monopoly in the Canadian market.

" In the calendar year 1935, as has already been pointed out, about one-fifth of everything Canada imported from Great Britain was raw material for the woollen and knitting industry or goods sold in competition with the Canadian industry. If the size of the woollen and knitting industry in Canada is compared to other manufacturing industries in Canada, it will be seen that this industry is already doing more than

by 6,111,440 square yards or 1,222,. In terms of Tariff Item 384 under which cloths weighing from 4 to 6 oz. in the grey are imported to Canada from Great Britain, the tariff board in their report, 1, said, "The British woollen textile industry enjoys a virtual monopoly of the Canadian market for these fabrics". The imports into Canada under this item amounted to $14,817 pounds, of which 301,112 pounds came from Great Britain. The Canada line Canada from Great Britain represents approximately 6,777,000 square yards.

In his report on economic and commercial conditions in Canada, 1928-1929, by His Majesty's Senior Trade Commissioner in Canada and National [illegible] [illegible] 'Australia and United Kingdom mills are in competition in this market in practically the entire range of cloths. The U.S.A. and other foreign competition is negligible.' That, of course, is subject to the four to six ounce cloth in which Great Britain has a monopoly in the Canadian market.

" In the calendar year 1929, as has already been pointed out, about one-fifth of everything Canada imported from Great Britain was raw material for the woollen and knitting industry or goods sold in competition with the Canadian industry. If the mills of the woollen and knitting industry in Canada is compared to other manufacturing industries in Canada, it will be seen that this industry is already doing more

"its relative share of the total import trade from Great Britain. In other words, the woollen and knitting industry in Canada has been called upon to a greater extent than other Canadian industries, taken as a whole, to make way for imports from Great Britain."

Then, dealing with cotton --

"While the Canadian cotton industry could be regarded as composing about 4% of manufacturing industry in Canada, based on the relative employment provided, the imports from Great Britain which compete with its production form about 11% of the total Canadian purchases of manufactured goods from the United Kingdom in the fiscal year 1935. Also duty free cotton imports from Great Britain in the fiscal year 1935 amounted in value to $2,099,430."

THE COMMISSIONER: What are the duty free cotton imports? That is the pure raw material?

MR. KELLOCK: No, it is yarns, my lord, and fine cloth.

THE COMMISSIONER: Yarns and what?

MR. KELLOCK: Yarns and fine cloth.

MR. McRUER: That is not made here.

MR. KELLOCK: I don't know what my friend is referring to. I am told it was.

THE COMMISSIONER: Is it made here now?

MR. KELLOCK: I am not able to answer that offhand, my lord, but I will make a note of that.

THE COMMISSIONER: If not, since when.

"its relative share of the total import trade from Great Britain. In other words, the woolen and knitting industry in Canada has been relied upon to a greater extent than other Canadian industries, taken as a whole, to make way for imports from Great Britain."

Then, dealing with cotton --

"While the Canadian cotton industry could be regarded as comprising about 4% of manufacturing industry in Canada, based on the relative employment provided, the imports from Great Britain which compete with its production form about 1/[illegible] of the total Canadian purchases of manufactured goods from the United Kingdom in the fiscal year 1936. Also duty free cotton imports from Great Britain in the fiscal year 1936 amounted in value to $4,099,480."

THE COMMISSIONER: What are the duty free cotton imports? That is the pure raw material?

MR. KELLOCK: No, it is yarns, my lord, and fine cloth.

[illegible]

MR. KELLOCK: Yarns and fine cloth.

MR. McMURRAY: That is not made here.

MR. KELLOCK: I don't know what my friend is referring to. I am told it was.

THE COMMISSIONER: Is it made here now?

MR. KELLOCK: I am not able to answer that [illegible] my lord, but I will make a note of that.

THE COMMISSIONER: If not, since when.

MR. KELLOCK: Pardon?

THE COMMISSIONER: If not made here now, since when; that is, did these agreements kill it?

MR. KELLOCK: I am told by Mr. Berry, my lord, that these duty free cotton imports are fabrics made from yarns of 100 count and finer, and that since 1932 they have not been made here.

THE COMMISSIONER: Fabrics made from yarn--

MR. KELLOCK: Of 100 count and finer.

THE COMMISSIONER: As well as the yarns themselves.

MR. KELLOCK: As well as the yarns themselves, and since 1932 they are not made here, that that market has been taken over by the British imports.

MR. McRUER: What actually happened was that in the 1932 conference the Canadian trade said they didn't want that market.

MR. HALLAM: No.

MR. KELLOCK: My instructions are that was not so, that the Englishmen insisted on having that and he got it.

MR. McRUER: A little different statement than I got.

MR. KELLOCK: Quite different.

MR. McRUER: My information came from the other side.

THE COMMISSIONER: If you subtract cotton yarns from the two million dollars I wonder if there would be much left for fine cloth.

MR. KELLOCK: We have the amounts, my lord.

MR. KELLOCK: Proceed.

THE COMMISSIONER: If we know just why, then when we look in, did these agreements kill it?

MR. KELLOCK: I am told by Mr. Harry, my lord, that large tag-tree mobile factory yarn textile made from yarns of 100 count and finer, and the 1932 times they have not been made here.

THE COMMISSIONER: Fabrics made from yarns--

MR. KELLOCK: of 100 count and finer.

THE COMMISSIONER: As well as the yarns themselves.

MR. KELLOCK: As well as the yarns themselves, and since 1932 they are not made here, that that market has been taken over by the British industry.

MR. McGUIGAN: What normally happened was that in the 1932 conference the Canadian trade said they didn't want that market.

MR. HAMMAM: No.

MR. KELLOCK: My instructions are that was not so, that the Kingfisher insisted on having that and he got it.

MR. McGUIGAN: A little different statement than I got.

MR. KELLOCK: Quite different.

MR. [illegible]: Assuming it came from the under-side.

THE COMMISSIONER: If you subtract 20 from yarns from the textile factory, it means it takes away from Jeff's the fine stuff.

MR. KELLOCK: Have the [illegible], my lord.

MR. McRUER: What is this exhibit 600, anyway?

MR. HALLAM: It was an exhibit you put in.

MR. McRUER: What is it? It was prepared for what purpose?

THE COMMISSIONER: We will take a few minutes off now.

-- The Commission adjourned for a short recess.

(page 16410 follows)

-- On resuming at 12 P.M.

MR. KELLOCK: My lord, I will have that free imports analysed for your Lordship and give you the details. Dealing with cotton piece goods:

"The outstanding points in the cotton trade from Great Britain are:

(a) Canada purchased more piece goods from Great Britain in 1934, 1935 and 1936 than in any other year since the Great war. The exports from Great Britain to Canada amounted to 63,8[illegible]1,000 square yards in 1934 and 59,892,000 square yards in 1935, and in 1936 jumped to 73,725,000 square yards, an increase over 1934 of 16%.

(b) In 1935 Great Britain supplied 78.8% of Canadian piece goods imports, the United States 16.2% and other countries 5%.

(c) Since 1932 the exports of piece goods from Great Britain to Canada has more than doubled - from 27.2 million square yards to 74,000,000 square yards in 1936 - while at the same time the total British exports to all Empire Countries have remained practically the same. In fact, of all the signatories to the agreements of Ottawa, 1932, only South Africa and Canada have been of substantial benefit to the United Kingdom Cotton Industry in increasing purchases.

(d) The best available estimate of the division of the Canadian Cotton cloth market on the yardage basis i n 1934 is

Canada	73.8%
Great Britain	22.7%
Other countries	3.5%"

THE COMMISSIONER: Is that the last year you have?

MR. KELLOCK: That is the last year we have, yes, my lord.

-- in reading at 12 P.M.

Mr. Chairman: My task, I will be glad if you report analysed for your assembly and give you the details. Dealing with out-on piece goods

"The outstanding points in our cotton trade from Great Britain are:

(a) Imports increased by five times from Great Britain in 1928, 1929 and 1930 than in any other year since the Great War. The imports (the first 11 months) amounted to 88,811,000 square yards in 1928 and 82,800,000 square yards in 1929, and in 1930 jumped to 73,785,000 square yards, an increase over 1929 of 34%.

(b) In 1929 Great Britain supplied 78.6% of Canadian piece goods imports, the United States 16.8% and other countries 3%.

(c) Since 1928 the exports of piece goods from Great Britain to Canada has more than doubled - from 27.2 million square yards to 74,000,000 square yards in 1929 - while at the same time the total British exports to all Empire Countries have remained practically the same. In fact, of all the signatories to the agreements of Ottawa, 1932, only South Africa and Canada have been of commercial benefit to the United Kingdom Cotton Industry in increasing purchases.

(d) The best available estimate of the statistics of the Canadian Cotton Industry covered on the yardage basis i n 1929 is

Cotton 76.8%
Rayon 20.1%
Other Textiles 3.0%

Mr. CHAIRMAN: In what the last year you have

Mr. KILLOCK: That is the last year in fact, of 1929.

MR. McRUER: There is not anything comparable to show the purchasers from other countries, the decline in purchases from other countries.

MR. KELLOCK: By Canada?

MR. McRUER: Yes.

MR. KELLOCK: It is right there.

THE COMMISSIONER: No, the quantum of the decline, is not there.

MR. KELLOCK: Well, my lord---

THE COMMISSIONER: The percentage of the market occupied by Canada, Great Britain and other countries.

MR.KELLOCK: There is a table which I have attached.

THE COMMISSIONER: You are referred to Exhibit 600.

MR. McRUER: This Exhibit 600 referred to is a Brief prepared by the Textile Institute for the Minister of Finance last June. When you make the reference, Exhibit 600, for these statements it merely refers to a Brief compiled by the Textile Institute.

MR. KELLOCK: And in that Exhibit the original source is set out in every case.

MR. McRUER: Well, is it?

MR. KELLOCK: Yes.

THE COMMISSIONER: Page 2, is the reference here.

MR. McRUER: I do not see any reference on page 2 to any source of that information. You see "See Reference 5," but when you go to Reference 5,

MR. MORDEN: The s is not anything comparable to show the purchases from other countries, the decline is purchases from other countries.

[illegible]

[illegible]

MR. KELLOCK: It is right there.

THE COMMISSIONER: No, the question of the decline is not there.

MR. KELLOCK: Well, my lord---

THE COMMISSIONER: The percentage of the market occupied by Canada, Great Britain and other countries.

MR. KELLOCK: There is a table which I have [illegible].

THE COMMISSIONER: You are referred to Exhibit 5[illegible].

MR. MORDEN: This Exhibit 5[illegible] referred to is a brief prepared by the Textile Institute for the Minister of Finance last June. When you make the reference, [illegible], you [illegible] refers to a Brief compiled by the Textile Institute.

MR. KELLOCK: And in that Exhibit the original source is set out in every case.

[illegible]

MR. KELLOCK: Yes.

THE COMMISSIONER: Page 2, is the reference here.

MR. MORDEN: I do not see any reference on page 2 to any source of that information. You see [illegible] 3, but that is in reference 6.

that is still another brief that was prepared by the Textile Institute.

MR. KELLOCK: No, it is the same.

MR. McRUER: It is part of the same brief but there is no---

MR. KELLOCK: The reference to statement 5, is a statement prepared by the Tariff Board which is attached to that.

MR. McRUER: Prepared by the Textile Institute.

MR. KELLOCK: Yes. Is my friend challenging the figures?

MR. McRUER: No, but when you make a reference to---

MR. KELLOCK: I submit it has the value of being correct and it is in evidence unless my friend says it is not correct.

MR. McRUER: I certainly do not vouch because I put in a brief that came from the Textile Institute---

MR. KELLOCK: I do not think you put it in.

THE COMMISSIONER: The point is whether or not in respect to other countries you can tell us what this 3.5% means.

MR. KELLOCK: Yes, my lord. Exhibit 1233 has a table which sets out the story from 1926 to 1934, and the imports from foreign countries in 1926 were, in millions of yards, 44.5, and percentage of the total is 14.2%. That is 14.2% of the Canadian market. In 1927 the imports were 55.5 millions of yards. The percentage was 16.8.

that is still another brief that was prepared by the Textile Institute.

MR. KELLOCK: No, it is the same.

MR. [illegible]: It is part of the same brief but [illegible]

MR. MULOCK: The reference to Statement 6, is a statement prepared by the Tariff Board which is [illegible] in BRA.

MR. MOLDER: Prepared by the Textile Institute.

MR. [illegible]: [illegible] Tariff?

MR. MOLDER: No, but when you make a reference [illegible]

MR. KELLOCK: I submit it has the value of being correct and it is in evidence unless my friend says it is not correct.

MR. MULOCK: I certainly do not want because I put in a brief that came from the Textile Institute--

MR. KELLOCK: I do not think you put it in.

THE COMMISSIONER: The point is whether or not in respect to other countries you can tell us one [illegible]

MR. KELLOCK: Yes, Mr Lord. Exhibit 1368 has a table which sets out the story from 1926 to 1934, and the imports from foreign countries in 1929 were, in millions of yards, 44.5, and percentage [illegible] of the Canadian market. In 1937 the imports were 14.4 millions of yards. The percentage was 16.8

In 1928 it was 64.1 millions of yards and the percentage 18.4. In 1929 it was 78 millions of yards and the percentage was 23.8. In 1930, 59.2 millions of yards and the percentage 21.4. In 1931 it was 46.4 millions of yards and the percentage 18.3. In 1932, 32.2 millions of yards and the percentage 13.1. In 1933, 20.8 millions of yards and the percentage 7.2.

In 1934, 15 millions of yards and the percentage 5.%.

THE COMMISSIONER: You have 3.5% here.

MR. KELLOCK: I am told, my lord, that the figures in my factum were the result of an exact survey for that particular year for the Tariff Board. Exhibit 1233 covers a period of years from the best available sources covering that period.

THE COMMISSIONER: Who compiled 1233 - the same people?

MR. KELLOCK: My clients did it.

THE COMMISSIONER: However, there is a discrepancy in there of 1½%.

MR. KELLOCK: There is, my lord. I see, my ~~MR. KELLOCK~~ lord, in that paragraph, "The best available estimate."

Well, in the case of cotton yarn:

"In 1935, Canada purchased more cotton yarns from Great Britain than in any previous year. The British Exports to Canada in 1935 were

In 1949 it was 64.1 millions of yards and the percentage 18.4. In 1948 it was 72 millions of yards and the percentage was 23.8. In 1950, 54.4 millions of yards and the percentage 21.4. In 1951 it was 49.4 millions of yards and the percentage 19.5. In 1952, 32.2 millions of yards and the percentage 15.1. In 1953, 20.8 millions of yards and the percentage 7.2.

In 1954, 13 millions of yards and the percentage 5.2.

The COURT REPORTER: You have 5.2% here.

MR. KELLOGG: I am told, my lord, that the figures in my factum were the result of an exact survey for that particular year for the Draft Board. Exhibit 1253 covers a period of years from the best available source covering that period.

[illegible] - the [illegible] [illegible]

MR. KELLOGG: My client did it.

[illegible]

MR. KELLOGG: There is, my lord. I am, my [illegible] lord, in that paragraph, "The best available evidence".

[illegible]

[illegible]

4,545,800 pounds, an increase over 1932 of 120%.

Great Britain supplied 92.3% of Canadian cotton yarns import in 1935.

The Tariff Board report that in 1934 the Canadian Market for cotton yarn for sale was divided

Canada	81.6%
Great Britain,	17.1%
Other countries,	1.3%"

THE COMMISSIONER: Now, then, do I understand that reading (b) and (c) together that Great Britain furnished us with 17.1% of the cotton yarns in 1934 and that jumped to 22.3% in 1935, is that right?

MR. KELLOCK: No, my lord, the 22.3% is of the imports. The 17.1% is the share of the market.

THE COMMISSIONER: Oh yes, they are two different things.

MR. KELLOCK: Yes, two different things, my lord. 92.3% simply shows that Great Britain was the chief source but when you come down to the share of the market, that 92.3% is for 1935, but Great Britain had 17.1 of ourmarket in the preceding year.

Then "artificial silk," in the case of fabrics:

"Sales of artificial silk fabric by Canadi n Mills were:

1934 -22,057,055 yards
1935 -29,530,187 " "
1936

4,545,800 pounds, an increase over 1922 of 180%.

Many Britain supplied 84.2% of our cotton yarns import in 1923.

The Tariff Board report that in 1923 the Canadian market for cotton yarn for sale was divided

Yarns	Size
Many Britain,	17.1%
Other countries,	1.3%

THE COMMISSIONER: Now, then, do I understand that reading (b) and (c) together that Great Britain finished us with 17.1% of the cotton yarns in 1924 and that jumped to 82.2% in 1923, is that right?

MR. KELLOCK: No, my lord, the 82.2% is of the imports. The 17.1% is the share of the market.

THE COMMISSIONER: Oh yes, they are two different things.

MR. KELLOCK: Yes, two different things, my lord. 82.2% simply shows that Great Britain was the chief source but when you come down to the share of the market, that 82.2% is for 1922, but Great Britain had 17.1 of our market in the preceding year.

Then "artificial silk," in the case of fabrics:

"Sales of artificial silk fabric by Canadian mills were:

1924 - [illegible] yards	
1922 - [illegible]	
1920	

In 6 months in 1935 - that is, the first six months of the year, 15,668,572 yards.

In 1936, the same six months, 16,065,196 yards.

MR. McRUER: That is, in spite of the Japanese competition.

MR. KELLOCK: Oh, I suppose so, in spite of everything.

"but fabric imports are recorded in pounds and contain mixtures so that no estimate of the division of this market is possible. It is shown however, that imports were -

1933	-	1,127,742	lbs.
1934	-	1,010,994	lbs.
1935	-	695,458	lbs."

Now, those are simply taking all artificial silk products:

"Dealing with the total use of artificial silk in Canada, a fair estimate of the division of the market can be derived from imported weights, and the weights of Canadian production shown in Exhibits 731 and 751, this shows:

In 1933 the imports were 2,918,489 pounds and the Canadian production was 8,445,537 pounds, and imports were 25.7% of the total and Canadian production 74.3%."

MR. McRUER: Do the Canadian production figures include mixtures?

MR. KELLOCK: No, this is only artificial silk.

Dr. G. Smith: In 1930 - that is, the first six months of the year - 14,644,372 pounds.

In 1926, the same six months, 16,023,144 pounds.

Mr. McLEAN: That is, in spite of the Japanese competition.

Mr. KILLOCH: Oh, I suppose so, in spite of every thing.

"But Fabric imports are recorded in pounds and contain allowance so that no estimate of the division of this market is possible. It is more convenient, that imports were -

1930	-	1,127,948	lbs.
1929	-	1,010,[illegible]	lbs.
1920	-	346,[illegible]	lbs."

Now, these are simply making all artificial silk products:

"Dealing with the total use of artificial silk in Canada, a fair estimate of the division of the market can be derived from imported weights, and the weights of Canadian production given in schedules 701 and 701, here shown:

In 1929 the Canadian year 1,114,[illegible] pounds and the American production was 8,440,337 pounds, and imports were 28.7% of the total and Canadian production 71.3%."

Mr. Smith: Do the Canadian producers fabricate fabric themselves?

Mr. KILLOCH: Yes, this is only partial silk.

MR. McRUER: I know but the imports include mixtures.

SECRETARY WHITELEY: This is yarn production.

MR. McRUER: No, all artificial silk products.

SECRETARY WHITELEY: The information is from the yarn figures, then.

MR. McRUER: No, they did not produce 8,445,000 pounds of yarn, did they? Is that yarn?

THE COMMISSIONER: What are we talking about - yarns or fabrics - because the word "yarn" is not here at all. It is "all artificial silk products".

MR. KELLOCK: It is everything; includes yarns and fabrics and everything. The language used is correct.

THE COMMISSIONER: You tell me that the total Canadian product of all artificial silk was 8,445,537 pounds?

MR. KELLOCK: Yes.

THE COMMISSIONER: And total importation was about 3,000,000.

MAJOR HALLAM: No, this is net figure, it was the net production.

THE COMMISSIONER: What do you mean by "net production"?

MAJOR HALLAM: Yarn figure is one figure and cloth figure is another. This is supposed to be the net weight of production.

MR. KELLOCK: That is, you do not count the yarn in the fabric twice?

MR. [illegible]: I have not the [illegible] [illegible]

[illegible]: That is your [illegible].

MR. [illegible]: No, all artificial silk products.

[illegible]: The information is from the [illegible].

MR. [illegible]: No, they did not produce 6,440,000 [illegible] of yarn, did they? Is that yours?

THE [illegible]: That was on twisting round - yarns or fabrics - because the word [illegible] is not [illegible] at all. It is "all artificial silk products".

MR. [illegible]: It is everything: including yarns and fabrics and everything. The language used is [illegible].

THE [illegible]: You tell me that the total Canadian product of all artificial silk was 4,440,[illegible]

MR. [illegible]: [illegible].

THE [illegible]: And total importation was [illegible].

MR. [illegible]: No, this is net figure, it was the net production.

THE [illegible]: That is [illegible] [illegible].

[illegible]: These figures if you [illegible] [illegible] figure [illegible]. This is supposed to be the net [illegible] of [illegible].

MR. [illegible]: Yes, I do, you [illegible] [illegible] the [illegible] [illegible].

MR. McRUER: You subtract the production of yarn from the weight of production of the fabric.

MR. BERRY: No, add production of yarn.

MR. McRUER: I know but you must subtract them from the weight of the frabric produced to get the net production of the fabric.

MR. BERRY: These are all artificial silk products, whatever used for.

MR. McRUER: Your point is if a million pounds of yarn produced by Courtaulds that goes into fabrics and you have 3,000,000 pounds of fabric eventually, you will need to take off million pounds of yarn or else you have doubled it up.

MR. BERRY: The Canadian figure is the sum of the products of the two mills making artificial silk in Canada. There is no possible duplication. Total products of all artificial silk that year.

MR. KELLOCK: Whether it remains yarn or becomes fabric, there is no duplication.

THE COMMISSIONER: How can you have a sum that is no duplication. Sum means addition.

MR. KELLOCK: It really means yarn whether it is subsequently fabricated or not.

THE COMMISSIONER: Anyhow the important thing is this: You say of all artificial silk products Canada herself produced 74%.

MR. McRUER: That is not a fair figure because 2,918,489 pounds include mixtures and cotton is quite

MR. MOSS: You subtract the production of yarn from the weight of production of the fabric.

MR. TERRY: No, add production of yarn.

MR. MOSS: I have not yet arrived there.

5 from the weight of the fabric produced to get the net production of the fabric.

MR. TERRY: Yarns are all artificial silk products whatever used for.

10 MR. MOSS: Your point is if a million pounds of yarn produced by subtracting that yarn into fabrics and you have 3,000,000 pounds of fabric straightly, you will need to have six million pounds of yarn or you have doubled it up.

15 MR. TERRY: The combined figure is the sum of the products of the two mills making artificial silk in Canada. There is no possible duplication. Total products of all artificial silk that year.

20 MR. MOSS: Whether it requires yarn or requires fabric, there is no duplication.

THE COMMISSIONER: How can you have a sum that is no duplication. Sum means addition.

25 MR. MOSS: It really means yarn whether it is manufactured or not.

THE COMMISSIONER: Anyway the important thing is this: You say of all artificial silk products Canada manufactures yearly.

30 MR. MOSS: That is why the first figure [illegible] [illegible] and section is quite

heavy and if there is ---

THE COMMISSIONER: Mixtures are governed by the same tariff items as whole.

MR. McRUER: Yes, that may be half cotton or three-quarters cotton, for all we know. Very likely to be a large portion of it.

MR. KELLOCK: Well, there are some mixtures and to the extent there are mixtures it does include it.

THE COMMISSIONER: Well, in the Canadian figures it does not include mixtures at all.

MR. KELLOCK: No. You cannot separate the import figures between pure silk and mixtures. There are several items in the tariff which are pure artificial silk items. There is no other way of comparing that I know of. Now, 1935 ---

THE COMMISSIONER: As a matter of fact, insofar as pure artificial silk products are concerned your percentage is higher than those. Must be, because you are off-setting against the mixtures.

MR. KELLOCK: Yes, my lord. Part of the Canadian production of yarn would go into mixtures.

THE COMMISSIONER: And you are putting them here too.

MR. McRUER: Any part that went into mixtures are included here.

MR. KELLOCK: The Canadian figures, my lord, are Canadian production of artificial silk and when you take the yarn you have got everything because it may

Heavy and if there is ——

THE COMMISSIONER: Mixtures are governed by the same tariff items as whole.

MR. MORROW: Yes, that may be half cotton or three-quarters cotton, for all we know. Very likely to be a large portion of it.

MR. MORROW: Well, there are some mixtures and we are asked have we discussed it here before it.

THE COMMISSIONER: Well, in the Canadian figures it does not include mixtures at all.

MR. MORROW: No. You cannot separate the import figures between pure silk and mixtures. There are several items in the tariff which are pure artificial silk items. There is no other way of separating that I know of. Now, 1928 ---

THE COMMISSIONER: As a matter of fact, imports as pure artificial silk products are concerned your percentage is higher than those. Must be, because you are off-setting against the mixtures.

MR. MORROW: Yes, of course. Say at the Canadian production of yarn would go into mixtures.

THE COMMISSIONER: Are you not quoting from page [illegible]

MR. MORROW: Any part that went into mixtures are included here.

MR. MORROW: The Canadian figures, my lord, are Canadian imports of artificial silk and then you

be fabricated subsequently, but those figures there are yarn figures and I am not duplicating it by taking the figures again when they are fabricated into fabric or woven or knitted or anything of that kind. If you take the yarn production of the two artificial silk yarn producing companies in Canada you have the total figure of Canadian artificial silk production and we set against that the import under the artificial silk item, which do include some mixtures.

Now, in 1935 the imports were 1,971,090 pounds, and the Canadianproduction was 13,179,932 pounds, the Canadian production being 87% of the total and the import 13%. And the division of the imports in 1935 were: United Kingdom 56.5% of the imports. The United States 20% and other countries 23.5%.

In dealing with carpets:

"The apparent Canadian market for carpets during recent years, from 1930 to 1935 -'recent years' means 1934 to 1935, and I set them out below.

	Canadian Production	Importantions at Invoice value	Total apparent market.
1930	$4,801,066	$ 2,371,971	$7,173,037
1931	3,518,511	710,971	4,229,482
1932	2,109,326	320,134	2,429,460
1933	2,195,849	419,682	2,515,531
1934	3,149,198	573,760	3,722,958"

And in 1935 the import, it should be, ---

THE COMMISSIONER: That is right, "These imports in 1935 were divided ---"

MR. KELLOCK: I have not given your lordship the

as fabricated commodity, and these figures were are yarn figures and I am not duplicating it by taking the figures again when they are fabricated into fabric or woven or knitted or anything of that kind. If you take the yarn production of the two artificial silk yarn producing companies in Canada you have the total figure of Canadian artificial silk production and we are quoting from the report made by artificial silk men, which is leading even industry.

Now, in 1922 the imports were 1,271,190 pounds, and the Canadian production was 12,172,982 pounds, the Canadian production being 87% of the total and the import 13%. And the division of the imports in 1920 were: United Kingdom 56.3% of the imports. The United States 30% and other countries 13.7%.

In dealing with yarns:

The expanded Canadian market for yarns during recent years, from 1920 to 1922 - "recent years" means 1919 to 1922, and I set them out below, and in 1922 the imports, it should be, ---

	Canadian production	Importations at Canadian ports	Total expanded yarn %
1919	8,[illegible]	1,271,[illegible]	[illegible]
1920	[illegible]	[illegible]	[illegible]
1921	8,139,386	[illegible]	8,[illegible]
1922	[illegible]	[illegible]	[illegible]
1923	8,147,152	[illegible]	[illegible]

The conclusion is: that is right, "Those imports in 1922 were divided ---

Mr. Chairman: I have not given you the exact

dollar value in 1935.

MR. McRUER: How do you get the percentages?

THE COMMISSIONER: These are only the imports.

MR. KELLOCK: The reason I cannot give your lordship the percentage of imports in 1935 and did not include it in the above table is that I did not have and cannot get the Canadian production as yet for 1935.

These imports in 1935 were divided between:

Great Britain	37.2%
British India	23.1%
Foreign countries	39.7%"

I am asking your lordship to strike out the next paragraph, paragraph 17. It is garbled.

THE COMMISSIONER: Well, we won't look at it.

MR. McRUER: That is about the competitive set-up of the Canadian mills.

MR. KELLOCK: No, my friend is not right.

THE COMMISSIONER: No use discussing it.

MR. KELLOCK: I am dealing with the Nature of Import Competition:

> In addition to the figures on imports as detailed in preceding paragraphs, some attention must be paid to the nature of the competition which the Canadian industry receives from British and foreign countries. Commercial dumping is an aspect of import competition which has had to be provided for in Canadian Customs law for many years."

THE COMMISSIONER: You mean "provided against"?

MR. KELLOCK: "Provided against in Canadian Customs

ROBT. BRYDIE
TORONTO CANADA

dollar value in 1900.

MR. MOLOCK: How do you get the percentage?

THE COMMISSIONER: Those are only the imports.

MR. MOLOCK: My question I gave you was the percentage of imports in 1885 and did not include in the above table is that I did not have and cannot the Canadian production as yet for 1885.

These imports in 1885 were divided between:

Great Britain	37.[illegible]%
United States	[illegible]
Foreign countries	34.[illegible]%

I am making your lordship to strike out the last paragraph, commencing "It". It is a trifle.

THE COMMISSIONER: Well, we can't look at it.

MR. MOLOCK: That is about the comparative net-up of the Canadian mills.

MR. KILLAM: No, my friend is not right.

THE COMMISSIONER: No use discussing it.

MR. KILLAM: I am dealing with the Nature of Import Competition:

In addition to the figures on imports as bearing on competition, some attention must be paid to the nature of the competition which the Canadian industry receives from British and foreign countries. Commercial dumping is an aspect of import competition which has had to be provided for in Canadian Customs Law for long years.

THE COMMISSIONER: You mean "provided against"?

MR. KILLAM: "Provided against" is a trifle [illegible]

law for many years."

"The first Canadian laws in regard to this aspect of international trade were introduced by the Hon. Mr. Fielding, Finance Minister of Canada, in 1904, and introducing them he stated, referring to manufacturers in other countries:

They are not worrying about the good of the people of Canada. They send goods here with the hope and the expectation that they will crush outthe native Canadian industries, and with the Canadian industry crushed out what would happen? The end of cheapness would come, and the beginning of dearness would be at hand. Artificial cheapness obtained to-day under such conditions, at the expense of dearness at a very near day in the future, is not a system of which we could approve or which any of us on either side of the House could encourage."

"An examination of the situation of the Cotton industry in Great Britain provides an illustration of the sort of condition in other countries which may seriously affect the Canadian market. The evidence indicates the level at which British exporters of cotton goods may sell their product in Canada due to the depressed state of the industry in Lancashire and the existing pressure there to find markets. As was shown in evidence, the British

and the long "Jamaica."

"The Ulster question here is raised in this respect of international trade were introduced by the hon. Mr. Pinkham, Finance minister of Canada, in 1904, and mitigating them be sought, referring to manufactures in Ulster condition:

They are not worrying about the good of the people of Canada. They have come here with the hope and the expectation that they will crush out the native Canadian industries, and with the Canadian industry crushed out that would be just the one of consequence which comes, and the beginning of dearness would be at hand. Artificial cheapness obtained to-day under such conditions, at the expense of dearness at a very near day in the future, is not a system of which we could approve or which any of us on either side of the House could encourage."

"An examination of the situation of the textile industry in Great Britain provides an illustration of the sort of competition in other countries which may unfavourably affect the Canadian market. The evidence indicates the level at which British exports of cotton goods may sell under present conditions of the depressed state of the industry in Lancashire and the falling exchange rate in the country. As is shown in evidence, the selling

cotton trade ever since 1921 has sustained heavy losses. The extent of these losses is shown in Exhibit 600, Ref. 7, statement 7 (d), where it appears that in the period between 1932 and 1934, 36 spinning companies went out of business. The total percentage of dividend payments to total paid-up share capital in the period 1930-4 was as follows:"

In 1930 there were 240 companies and their dividend was .665%. In 1931 there were 211 companies and their dividend was .3893%. In 1932 there is a shrinkage of the number of companies to 207 and a shrinkage of the dividend is .3418%. In 1933 the companies again shrink to 187 and the dividend to .3209% ---

THE COMMISSIONER: Does this number of companies mean the total spinning companies in Great Britain?

MR. McRUER: They are the companies listed on the Oldham Exchange, are not they?

MR. KELLOCK: Yes.

THE COMMISSIONER: And they are only spinning companies?

MR. KELLOCK: Yes, my lord.

MR. McRUER: I am not sure that is right.

MR. KELLOCK: They are only spinning companies. In 1934 the number of companies had shrunk to 171 and the dividend .3577% on their paid-up capital.

MR. McRUER: What are they percentage of ?

MR. KELLOCK: Stated on preceding page. Dividend payments of all companies to total paid-up

[illegible] were also led the remaining large losses. The extent of these losses is shown in exhibit 600, Part 7, [illegible] 7 (4). From it appears that in the period between 1922 and 1929, 36 spinning companies went out of business. The [illegible] paid-up share capital in the period 1920-4 was as follows:"

In 1920 there we e 240 companies and their dividend was .8558%. In 1921 there were 221 companies and their dividend was .3898%. In 1922 there is a shrinkage of the number of companies to 207 and a shrinkage of the dividend is .3418%. In 1923 the companies again shrink to 197 and the dividend to .2809% ---

THE COMMISSIONER: Does this number of companies mean the total spinning companies in Ontario initially

MR. MONDER: They are the companies listed on the [illegible], are not many?

MR. [illegible] Yes.

THE COMMISSIONER: And they are only spinning companies?

MR. MONDER: Yes, my Lord.

[illegible] I am not sure that is right.

[illegible]: They are only spinning companies.

In 1924 the number of companies has shrunk to 171 and the dividend .2277 of their paid-up capital.

[illegible] and are very [illegible] of 1

MR. MONDER: Based on preceding years.

Dividend payments of all companies to total paid-up

share capital ---

THE COMMISSIONER: Percentage of dividends paid to the capital?

MR. KELLOCK: Yes. In other words, there must have been a comparative few paid any dividends at all.

Then the next sentence:

"Out of the 171 companies mentioned, in 1934 the number paying dividends was only 35."

THE COMMISSIONER: These are percentages?

MR. KELLOCK: Yes.

THE COMMISSIONER: The last figure there is .35--one-third of one-per cent.

MR. KELLOCK: Yes, my lord.

"It is submitted that the above indicates the non-profitable nature of British cotton goods selling prices.

Mr. W.J. Whitehead, Managing Director of the Wabasso Cotton Company, gives instances of British dumping in Canada which came to his attention."

Now, those instances, my lord, were two. In the first place, there was purchased by the Wabasso Company itself, which Mr. Whitehead said was below cost. The other one was an actual importation of a million yards into Canada and the head of the exporting company in an interview with Mr. Whitehead himself while he was out here admitted that he had taken the order at the actual cost of wages and cotton. That is what the evidence is.

there capital ---

Q. (MACDONALD): Treatment of dividends paid in the majority.

M. MILLER: Yes. In other words, I do not have been a comparatively few paid any dividends at all, from the small shareholders.

"Until the 1931 amalgamation, in 1931 the number paying dividends was only 50."

THE COMMISSIONER: These are preferences?

MR. (LEONARD), Jun.:

THE COMMISSIONER: The last figure there is 1931 -- 1931 of ordinary shares?

MR. MILLER: Yes, my lord.

"It is submitted that the gross inference from non-provisions return of British Columbia gross profits taxes.

Mr. G.L. Williams, managing director of the Canada Cotton Company, gives increase of British company in Canada which came to his attention."

Mr. Lane (Lennox), Jun.: Q. In the first place, there was purchased by the Canada Cotton itself, which Mr. Williams said was higher cost. The other one was an actual importation of a million yards into Canada and the cost of the Canadian cotton in interview with Mr. Williams himself which we are not here committed that is the other one was at the actual cost of wages and cotton. That is more the evidence in.

THE COMMISSIONER: In the year 1934?

MR. KELLOCK: Yes, it is stated there, in the autumn of 1934 or the spring of 1935. It is the last sentence in that paragraph.

-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

MR. CHARLES LAWS: In the year 1900?

MR. HALLAM: Yes, it is noted there, in the autumn of 1899 or the spring of 1900. It is the last document in that paragraph.

-- The Commission adjourned to Lake St. Peter at 8.30 p.m.

--The Commission resumed at 2.30 p.m.

Mr. KELLOCK: I have the analysis of the figures for duty free cotton imports referred to on page 4, section E of my brief. The last sentence of paragraph 11 on that page reads:

"Also duty free imports from Great Britain in the fiscal year 1935 amounted in value to $2,099,430."

That is made up in this way, as to yarns. Mercerized 40's and finer, $353,652. Then 2-ply 80's and finer, $27,076. I am instructed that these are not made here.

The COMMISSIONER: That means they never were made here.

Mr. KELLOCK: Coming to the last subdivision of this table which I am giving to Your Lordship now, there is another item, 40's and finer--

The COMMISSIONER: You are still on paragraph 11 ?

Mr. KELLOCK: Yes. This is another item, 40's and finer for mercerizing, $705,198. Your Lordship sees that these yarns are mercerized here, so you will have to consider that in connection with my statement about mercerized 40's and finer, which is the first item given. Mercerizing is done here in connection with these yarns. The next item under yarns is 40's and finer for thread, and some of these are made here. The figure is $603,945. That is a total of yarns of $1,689,871. Then I come to fabrics, 100's or finer, $340,035. As to that item, I am instructed that the English exporter will take 2-ply 100 yarn, weave it and ship it in here under that free item, and when you do that you really have fabric made out of 50's, and these imports do compete with fabrics made in Canada

--The Commission resumed at 1.40 p.m.

Mr. [illegible]: I have the analysis of the figures for duty free textile imported [illegible] section 3 of my brief. The last sentence of paragraph 1 on that page reads:

"Duty free imports from duty paying [illegible] in the fiscal year 1951 amounted to [illegible] $4,328,000."

That is made up in this way, as to yarns, mercerized 40's and finer, $325,000. Then 2-ply 80's and finer, $27,000. I am instructed that there are not made here.

The [illegible]: That means they never were made here.

Mr. [illegible]: Coming to the last subdivision of this table which I am giving to Your Lordship now, there is another item, 40's and finer--

The [illegible]: You are still on mercerized, is [illegible]

Mr. [illegible]: Yes. This is another item, 40's and finer for mercerizing, $706,100. Your Lordship sees that these yarns are mercerized here, so you will have to consider that in connection with my statement about mercerized 40's and finer, which is the first item given. Mercerizing is done here in connection with these yarns. The next item under yarns is 2-ply and finer for thread, and none of these are made here. The figure is $325,342. That is a total of yarns of $1,000,271. Then I come to fabrics, 1-ply or finer, [illegible],000. As to that item, I am instructed that the British exporter will take 2-ply 100 yarn, weave it and sell it in here under that free item, and when you [illegible] that you really have fabric made out of 80's, and [illegible]

from 50's. The next item is fabrics for typewriter ribbons, $44, 247. There is a small item of billiard cloth, $133.

Mr. McRUER: That is free ?

Mr. KELLOCK: Yes, these are all free. Then there is Egyptian sail cotton, $1,717. Cotton sail cloth is made here but not from Egyptian cotton. Then there is white cotton bobbinet, $20,472, and there is a small item of circular duck, $24. Then there is an item of tapes for blinds, $2,931. The total of these fabrics is $409,559. The total of fabrics and yarns gives us a figure of $2,099,430. That is the figure which Your Lordship will find in paragraph 11.

Perhaps I might refer to the following page also, the paragraph at the top of the page, clause (d) in connection with which I was discussing this morning the division of the cotton cloth market. I referred to Exhibit 1233 which gave the figures from 1926 to 1934, the last one being 5 per cent. I want to refer also to what the exhibit itself says, because it shows where the difference comes in. The statement is made:

> "The public sources of information on these points are the Dominion Bureau of Statistics and Trade of Canada. That is for the whole period 1926-34. Unfortunately the data reported from these two sources differ in one important principle, namely, that while the dominion bureau data are compiled from reports of various Canadian companies for their fiscal years, Trade of Canada statistics are compiled on the basis of calendar years. The fiscal years of the Canadian cotton companies vary so widely that in the Dominion

from 80%. The next item is fabrics for upper-
ware, 14%, 24%. There is a small item of finished
cloth, 12%.

The country that is next

is Australia. Here, these are all free. Then there
is Egyptian sail cotton, $1,717. Cotton sail cloth
is from Egypt but not from Egyptian mills. Then there
is white cotton bobbinet, $20,472, and there is a
small item of circular duck, $54. Then there is an
item of tapes for binding, $2,251. The total of these
fabrics is $106,554. The total of fabrics and yarns
gives us a figure of $2,099,480. That is the figure
which your orderly will find in paragraph 11.

Perhaps I might refer to the following page also,
the paragraph 17 at the top of the page, [illegible] clause
(d) in connection with which I was discussing this
morning the division of the cotton cloth market. I
referred to exhibit 1243 which gave the figures from
1926 to 1934, the last one being 5 per cent. I want
to refer also to what the exhibit itself says, because
it [illegible] [illegible]. The [illegible]
[illegible] is [illegible].

"The public sources of information on these
points are the Dominion Bureau of Statistics and
trade of Canada. That is for the whole year on
1930-34. Unfortunately the data reported from
these two sources differ in one important prin-
ciple, [illegible] while the Dominion Bureau data are
[illegible] [illegible] for pro-
ductions for their fiscal years, trade of Canada
statistics are compiled on the basis of calendar
years. The fiscal years of the [illegible] are
[illegible] [illegible] [illegible]

"Bureau data for 1933 there are included production reports ranging from July 1932 to March 1934. It is obvious that these data cannot be construed to indicate anything in regard to Canadian production in any calendar year."

This statement goes on to say that it follows that no combinations of Dominion Bureau data and Trade of Canada data can be made in which the market in any one calendar year can be split as between Canadian, English and foreign producers. The most that can be claimed for the Dominion Bureau table is that over a period of years their figures indicate a trend. To remedy this difficulty, it is stated, the Primary Textiles Institute made a complete survey for the calendar year 1934. All the mills cooperated in the investigation of these data for the one year under consideration, and adding the Trade of Canada data the percentages supplied by Canada, Great Britain and other countries can be fairly accurately determined. That is the study which appears in my brief in paragraph 12, and that is based on reports from the mills themselves. Those reports appear in Exhibit 1233, so that the figures covering the period from 1926 to 1934, while they indicate a trend, cannot be taken exactly for the year. The figures in my brief for the year 1934 are exact.

Exhibit 1233 was filed with the tariff board, and in their report the tariff board make the very same statement that appears on page 9. They say that the published source of information on the production of cotton yarns in Canada is reported by the Dominion Bureau of Statistics, and the data reported to the Dominion Bureau of Statistics, from which this report is compiled, are for the fiscal years of various

companies. These vary so widely that the data included in the Dominion Bureau's report for 1934 cover production reports for months ranging from July 1933 to March 1935; and the statement in this report is that while the printed figures are useful as indicating a trend over a period of years, they are not sufficiently accurate for one calendar year. Then the report goes on to point out that in order to overcome this difficulty the Primary Textiles Institute made a complete survey for the year 1934, and unless otherwise specifically mentioned, all production data are taken from this survey.

At adjournment I was dealing with paragraph 20 at page 8, Section E. I have given Your Lordship two instances to which Mr. Whitehead referred in his evidence. He said that he had not had the report from the customs department, but that between the time he was examined on that particular day and a later date he had been in touch with the department and had found that the department had ruled against his contention. The department did not know, as pointed out in that paragraph, that the English exporter, in the case of the million yards item, had admitted to Mr. Whitehead that the price had been set simply to cover the cost of wages and cotton.

Mr. McRUER: That is not evidence of dumping.

Mr. KELLOCK: I understand that dumping is on the basis of no profit, selling below cost of production. If there is any question about it, the evidence is that Mr. Whitehead said that he himself had made the one import and he knew of the other import of a million yards. He said he complained to the department and nothing had been done. On the second occasion in his

[illegible]

[illegible] Yes, I do. I don't [illegible] included in the Sullivan Report's [illegible] every [illegible] people for [illegible] [illegible] only [illegible] to March 1947; and the statement in this report is that until the [illegible] figures are issued on indications over a period of years, they are not sufficiently accurate for one calendar year. Then the report goes on to point out that in order to overcome this difficulty the Primary Textiles Institute made a complete survey for the year 1946, and unless otherwise specifically mentioned, all [illegible] are taken from this survey.

At adjournment I was dealing with paragraph 40 at page 6, section E. I have given four formally two [illegible] to which Mr. [illegible] referred in his evidence. He said that he had not had the report from the customs department, but that between the time he was examined on that particular day and a later date he had [illegible] with the department and had found that the department had ruled against his contention. The department did not know, as pointed out in [illegible] paragraph, that the [illegible] requested, in the case of the million yards item, had submitted to it. Had [illegible] that the price had been set simply to cover the cost of [illegible] and [illegible].

Mr. [illegible]: That is not evidence of dumping.

Mr. KNIGGEN: I understand that dumping is on the basis of no profit, selling below cost of production. If there is any question about it, the witness is [illegible]. Although only [illegible] [illegible] [illegible] [illegible] of the other [illegible] of a million yards. He was questioned by the [illegible] [illegible] [illegible] done. On the [illegible]

evidence he said that he had been in touch with the department in the meantime and they had ruled against his contention, but that the department did not have before them the admission of the English exporter.

Mr. McRUER: The department had all that information on file. Why should not the department have it ? If Mr. Whitehead possessed knowledge would he not impart that knowledge to the department in support of his claim that there was dumping?

Mr. KELLOCK: He had complained about the two importations and after complaining about this shipment of a million yards he had this interview with the manager of the English concern who told him this; but, Mr. Whitehead said, he did not feel free to report to the department the substance of that conversation. I say therefore that the department did not have the express admission of the English exporter that the price was simply a figure which covered cost of wages and cotton and did not include overhead or profit.

Mr. McRUER: But he did not state that it was dumping.

Mr. KELLOCK: But that is dumping.

The COMMISSIONER: Is it less than the selling price in the home market ? They cannot go on indefinitely selling at a loss.

Mr. KELLOCK: Under section 36 it would be dumping.

The COMMISSIONER: The word dumping is defined in so many ways that I will not question anyone's use of it.

Mr. KELLOCK: One very usual sense in which the word is used in the statute is that of selling here at a price which is below cost of production, and in another case it is used in the sense of not including any profit. The statute expressly says that. In the very next

evidence he said that he had been in touch with the department in the meantime and they had some [illegible] his contention, but that the department did not know before then the existence of the [illegible] contract.

Mr. [illegible]: The department had all that information on file. Why should not the department have it? [illegible] that knowledge to the department in support of his claim that [illegible].

Mr. [illegible]: He had complained about the two interventions and after complaining about this situation [illegible] million yards he had this interview with the manager of the Indian concern who told him that, Mr. [illegible] said, he did not feel free to report to the [illegible] the existence of their connection. I may [illegible] fore that the department did not have the advantage of [illegible] information of the Indian exporter that the price was [illegible] a figure which covered cost of [illegible] and did not include overhead or profit.

Mr. [illegible]: But he did not state that it was [illegible].

The [illegible]: Is it less than the selling price [illegible] the home market? They cannot do an indefinite [illegible] selling at a loss.

Mr. [illegible]: [illegible] it would be [illegible].

The [illegible]: The word dumping is defined in [illegible] way that I will not question anyone's use of [illegible].

Mr. [illegible]: [illegible]

paragraph I deal with the same matter. From Exhibit 600 I quote the following, in paragraph 21:

"The natural result of conditions in Lancashire has been to create a situation in which selling prices abroad bear little relation to actual cost of production. It is true that the exporter of cotton goods to Canada signs a certificate to the effect that a selling price is not less than cost plus a reasonable advance for selling and profit. But, in the industry as at present organized in Lancashire, the cotton passes through the hands of spinning, doubling and weaving and finishing companies before being sold by an export merchant. If the spinner, doubler, weaver and finisher all sold at a loss but the merchant sold at a profit to himself he could give the required certificate although as a commercial fact the cloth was actually sold at less than it cost to manufacture in Great Britain."

The exporter can give the certificate because the --- article had passed through so many hands that the --- result might well be that it was below cost of production.

The COMMISSIONER: Everyone else took a loss but the exporter?

Mr. KELLOCK: I am saying that that could happen and a certificate be given; and when you look at the records of the spinning companies, as set out, you will see to what extent losses have been taking place for years.

The COMMISSIONER: When the exporter gives a certificate with respect to cost, does he give it as to his own cost as a buyer and seller ?

Mr. KELLOCK: It is just his own cost.

The COMMISSIONER: It is not cost of production ?

Mr. KELLOCK: I think not. The invoices I have here are consignment invoices, but that would not make any difference. One states that the invoice contains a just and faithful valuation of the goods at their fair market value sold for home consumption in the principal markets of the country.

The COMMISSIONER: Does the exporter certify that ? Is that the invoice certified to by the exporter ?

Mr. KELLOCK: Yes.

The COMMISSIONER: He is speaking there of sale on the markets of Great Britain ?

Mr. KELLOCK: This is by the exporter.

The COMMISSIONER: Do you mean to say that they are selling these articles on the British market at less than the cost of spinning, weaving and every other process all along the line ?

Mr. KELLOCK: I am saying that for this reason. Here is the general situation in the industry in England. Between 1930 and 1934 there were 39 spinning companies that disappeared out of that group--I beg Your Lordship's pardon, it is more than that; it is 69.

The COMMISSIONER: On the previous page you speak of 39 spinning companies goingout of business. That should be 69 ?

Mr. KELLOCK: No, that is between 1932 and 1934.

Mr. McRUER: Are you saying that they are out of business or that they are not listed on the exchange ?

Mr. KELLOCK: The statement is that they went out of business.

Mr. McRUER: That is not what exhibit 600 says.

Mr. KELLOCK: What does that exhibit say ? I thought that was the statement.

Mr. McRUER: My recollection is that the number listed on the Oldham exchange was so many at one time and so many at another.

The COMMISSIONER: You make a statement, Mr. Kellock, which I doubt whether you can substantiate. You say that if the spinner, doubler, weaver and finisher all sold at a loss but the merchant sold at a profit to himself, he could give the required certificate, although as a commercial fact the cloth was actually sold at less than it cost to manufacture in Great Britain. That does not seem to be right according to what you have just read with regard to the certificate, because the certificate is that the price mentioned in the price on the markets of Great Britain.

Mr. KELLOCK: With due respect to Your Lordship, I do not see any contradiction there, because if the same exporter were selling for export here at a profit over his cost and were selling at the same price in Great Britain there would be nothing contradictory.

The COMMISSIONER: The article is being sold on the principal markets. What does the certificate say ?

Mr. KELLOCK: It states that the invoice contains a just and faithful valuation of the said goods at their fair market value as sold for home consumption in the principal markets of the country.

The COMMISSIONER: Quite so; as sold for home consumption on the principal markets.

Mr. KELLOCK: By himself and his competitors.

The COMMISSIONER: That would mean that all those people are taking a loss right on the home market.

Mr. MELDRUM: Have you got that exhibit say ?

I thought that was the statement.

Mr. MORRIS: My recollection is that the number of on the oldham exchange was so many of one time and so many at another.

The Commissioner: The rule is a temporary one.

Witness: Since I made another for the exchange.

You may then, if the spinner, doubler, weaver and finisher all sold at a loss but the merchant sold at a profit to himself, he could give the required certificate, although as a commercial fact the cloth was actually sold at less than it cost to manufacture in Great Britain. That does not seem to be right according to what you have just said with regard to the certificate, because the certificate is that the price charged in the price on the markets of Great Britain.

Mr. MELDRUM: With the respect to Your Lordship, I do not see any contradiction there, because if the home producer were selling for export less at a profit over his cost and were selling at the same price in Great Britain there would be nothing contradictory.

The Commissioner: The article is being sold on the principal market. That does the certificate say ?

Mr. MELDRUM: It states that the invoice contains a just and truthful valuation of the said goods at their fair market value in said for home consumption in the principal markets of the country.

The Commissioner: Quite so; as said for home consumption on the principal markets.

Mr. MELDRUM: By himself and his connections.

The Commissioner: That would mean that all trade should not having a less right on the home market.

How long will that go on ?

Mr. KELLOCK: I believe it has gone on for some years in the cotton industry in Great Britain.

The COMMISSIONER: In other words, they are just manufacturing for the fun of it and selling at a loss ?

Mr. KELLOCK: They have been having a difficult time. I think it is pretty common knowledge.

The COMMISSIONER: But he cannot give that certificate unless the fact is as stated. You say that he can give the certificate so long as he makes a profit for himself, but that is not so. The certificate is intended to ascertain that the selling price on that invoice is not less than the home price in Great Britain in the principal markets of Great Britain.

Mr. KELLOCK: That is quite true, My Lord, but the certificate that he would give--

The COMMISSIONER: That is the one he gives.

Mr. KELLOCK: Yes.

The COMMISSIONER: He has to have general knowledge. He has to know what the selling price on the home market is; otherwise he cannot give the certificate. Because he happened to buy a consignment cheap has nothing to do with the case.

Mr. KELLOCK: It would not necessarily be an isolated instance. He is an exporter, and if he is exporting, then presumably--

The COMMISSIONER: I do not wish to interrupt you, Mr. Kellock, but you say that the cotton industry in Great Britain is manufacturing at a loss and selling at a loss at home, and exporting at a loss, and that that constitutes dumping.

Mr. KELLOCK: Yes.

The COMMISSIONER: And the department will not

how long will that go on?

Mr. MELLOCK: I believe it has gone on for some years in the cotton industry in great Britain.

The COMMISSIONER: In other words, they are just manufacturing for the run of it and selling at a loss.

Mr. MELLOCK: They have been for long a different time. I think it is a pretty common knowledge.

The COMMISSIONER: But he cannot give that certificate unless the fact is as stated. You say that he can give the certificate so long as he makes a profit for himself, but that is not so. The certificate is intended to ascertain that the selling price on that invoice is not less than the home price in Great Britain in the principal markets of Great Britain.

Mr. MELLOCK: That is quite true, my lord, but the certificate that he would give--

The COMMISSIONER: That is the one he gives.

Mr. MELLOCK: Yes.

The COMMISSIONER: He has to have general knowledge; he has to know what the selling price on the home market is; otherwise he cannot give the certificate. Because he happened to buy a consignment cheap has nothing to do with the case.

Mr. MELLOCK: It would not necessarily be an isolated instance. He is an exporter, and if he is exporting, then presumably--

The COMMISSIONER: I do not wish to interrupt you, Mr. Mellock, but you say that the cotton industry in Great Britain is manufacturing at a loss and selling at a loss at home, and exporting at a loss, and that that constitutes dumping.

Mr. MELLOCK: Yes.

The COMMISSIONER: If the Department will not

recognized that as dumping ?

Mr. KELLOCK: In the two illustrations we gave they did not.

The COMMISSIONER: Where did you get the evidence that these people are doing that at home, manufacturing and selling at a loss there ? Have you any evidence Mr. McRuer ?

Mr. McRUER: What my learned friend is relying on is the statement that they have not been paying ~~did~~ dividends, but they probably paid very large dividends at some other time if they are not paying as much now.

The COMMISSIONER: They are not paying large dividends, but they are paying some.

Mr. McRUER: They are making a profit somewhere. I find that I was right, My Lord. My learned friend says that the companies to which he has referred have gone out of business, but that is not what the exhibit says. It says they have gone off the list of the exchange. In England at the present time they are closing up mills and there is a board that arbitrates, fixing the remuneration for the owners of those mills that have been closed, and the remaining mills are assessed in order to provide that remuneration.

The COMMISSIONER: If they are removed from the list and are disposed of they are out of business.

Mr. McRUER: The statement is that many ~~this~~ firms have gone out of the list.

Mr. KELLOCK: That means that they have gone out of business.

Mr. McRUER: The statement is that during the year a number of firms have gone out of the list, there being now 171 companies as against 187 in 1933 and 237 the year before. The number paying dividends

recognized that as dumping ?

Mr. MUDGEON: In the two illustrations we gave they did not.

The COMMISSIONER: Have you got the evidence that these people are doing that at home, manufacturing and selling at a loss there ? Have you any evidence Mr. Counsel ?

Mr. MOUNTS: That my learned friend is relying on is the statement that they have not been paying any dividends, but they probably paid very large dividends at some other time if they are not paying as much now.

The COMMISSIONER: They are not paying large dividends, but they are paying some.

Mr. MOUNTS: They are making a profit somewhere. I find that I was right, my lord. My learned friend says that the companies to which he has referred have gone out of business, but that is not what the evidence says. It says they have gone off the list of the exchange. In Montreal at the present time they are closing up mills and there is a board that exists, fixing the remuneration for the owners of those mills that have been closed and the [illegible] and arranged in order to provide that remuneration.

The COMMISSIONER: If they are removed from the list and are disposed of they are out of business.

Mr. MOUNTS: The statement is that, as my friend has pointed out of Sun Life.

Mr. MILLSON: That means that they have gone out of business.

Mr. MOUNTS: The evidence is that during the year a number of firms have gone out of the list, there being now 171 companies as against 167 in 1932 and 207 the year before. The number paying dividends

however has increased from 31 in 1933 to 35.

Mr. KELLOCK: My instructions are that "gone out of the list" means gone out of business.

Mr. McRUER: This is the exhibit received from your clients and filed.

The COMMISSIONER: It is the exchange list.

Mr. McRUER: It shows the companies listed on the exchange.

The COMMISSIONER: Since they are no longer listed on the exchange the assumption is that they are no longer out of business ?

Mr. KELLOCK: Yes. My attention has been drawn to Exhibit 601 which contains a statement of United Kingdom spinning companies' operating results. It deals with 157 companies which made a loss in 1930 of £1,028,004.

Mr. McRUER: But they paid an average dividend of 1.91 per cent.

Mr. KELLOCK: At that time there were 232 companies in business.

The COMMISSIONER: What year was that ?

Mr. KELLOCK: That was in 1930.

The COMMISSIONER: You have 240.

Mr. KELLOCK: This shows only 232.

The COMMISSIONER: The difference is not great.

Mr. KELLOCK: The capital of these 232 companies was £32,610,000 and the average dividend was 1.91 per cent. In the following year there were 134 companies that made a loss of £1,035,474.

The COMMISSIONER: Is that a loss ?

Mr. KELLOCK: Yes. The total figure of companies for that year is 201 with a capital investment of £28,657,000 and the dividend was 1.46 per cent. In

however has increased from 31 in 1930 to 55.

Mr. KELLOGG: My instructions are that "some out of the list" means gone out of business.

Mr. BOWMAN: This is the exhibit received from your clients and mine.

The COMMISSIONER: It is the exchange list.

Mr. BOWMAN: It shows the companies listed on the exchange.

The COMMISSIONER: Since they are no longer listed on the exchange the assumption is that they are no longer out of business ?

Mr. FILLMORE: Yes. My substitution has been drawn to Exhibit 001 which contains a statement of united stockholding company' specialist [illegible] dealing with 107 companies which made a loss in 1930 of $1,520,004.

Mr. BOWMAN: But they paid an average dividend of [illegible] per cent.

Mr. KELLOGG: At that time there were 255 companies in business.

The COMMISSIONER: What year was that ?

Mr. [illegible] Just one in 1930.

[illegible]

Mr. [illegible] It's same only [illegible].

The COMMISSIONER: The difference is not great.

Mr. KELLOGG: The capital of these 255 companies was $38,810,000 and the average dividend was 1.81 per cent. In the following year there were 184 companies that made a loss of $1,000,974.

The COMMISSIONER: Is that a loss ?

Mr. KELLOGG: Yes. The total figure of companies for that year is 301 with a capital investment of $2,997,000 and the dividend was 1.41 per cent. In

1932 120 companies made a loss of $ £425,954. Altogether 191 companies had a capital of £27,682,000 and the average dividend was 1.55 per cent. In 1933 119 companies made a loss of £389,446, and the total number of companies given in that year was 178, the capital being £25,483,000, the average dividend being 1.5 per cent. In 1934 there were 114 companies that made a loss of £40,531; the total number of companies was 173, the capital being £24,359,000 and the average dividend being 1.57 per cent. So that the industry was anything but prosperous. Let me now call attention to the next clause in the certificate, clause(b). It states that in the case of new or unused goods consigned lower--that is the value--than the actual cost of production of similar goods at the date of shipment direct to Canada, plus a reasonable advance for selling cost and profit--

The COMMISSIONER: He could not take that on the grounds given. That is the cost of production. Your statement is that the exporter can give the required certificate because he is only concerned with what he paid, and as long as he is reselling at a profit he is safe. But that is not so. That certificate requires something very different in two particulars--first as to the price in the home market, and secondly as to cost of production.

Mr. KELLOCK: I did not construe it in that way, My Lord.

TheCOMMISSIONER: In my opinion he would get into trouble if he gave that certificate.

Mr. KELLOCK: He could give it if he were getting a profit.

The COMMISSIONER: You do not seriously contend

1924 120 companies made a loss of $ 4,443,944. Liquidation 121 companies had a capital of $47,882,000 and the average dividend was 1.55 per cent. In 1925 119 companies made a loss of [illegible], and the total number of companies given in that year was 172, the capital being $55,444,000, the average dividend being 1.5 per cent. In 1926 there were 114 companies that made a loss of $40,951; the total number of companies was 173, the capital being $54,329,000 and the average dividend being 1.97 per cent. So that the industry was anything but prosperous. Let me now call attention to the next clause in the certificate, clause(b). It states that in the case of new or unused goods consigned lower--that is the value--than the actual cost of production of similar goods at the date of exported [illegible] is enough, also a reasonable amount for selling and for profit--

The COMMISSIONER: He could not have that on the grounds given. That is the cost of production. Your statement is that the exporter can give the required certificate because he is only concerned with what he paid, and as long as he is [illegible] at a profit he is safe. But that is not so. That certificate requires something very different in two particulars--first as to the price in the home market, and secondly as to [illegible] of production.

Mr. KNOWLSON: I did not construe it in that way, my lord.

Mr. [illegible]: In my opinion he would get into trouble if he gave that certificate.

Mr. [illegible]: He would give it if he [illegible] [illegible] profit.

Mr. [illegible]: [illegible] it is not [illegible]

that, do you ?

Mr. KELLOCK: Of course, my Lord, I see the weakness of the contention because the language is very general.

The COMMISSIONER: The language is very searching, and those two particulars I have mentioned would have tobe observed.

Mr. KELLOCK: We know what the history of the cotton industry in England has been.

The COMMISSIONER: Your other point may be all right. It may be that the cotton industry is in such a condition that it is dumping its goods on its own home market as well as abroad and will carry on that policy as long as there is money left.

Mr. KELLOCK: I got from that fact some support for my construction of the certificate.

The COMMISSIONER: Still, on the whole they are paying dividends and have been continuing as the years have gone on.

Mr. KELLOCK: Comparatively few companies.

The COMMISSIONER: They are paying one-third of one per cent.

Mr. KELLOCK: They are not necessarily getting a profitona all individual items of output, and it was only thirty-five companies that were paying dividends in 1934.

The COMMISSIONER: That is not the point. You gave the dividends in respect of the total capitalization.

Mr. KELLOCK: Yes, that is right.

The COMMISSIONER: You must mean something by that.

Mr. KELLOCK: The way I put it is like this. If so many companies engaged in the cotton industryin England are making losses, and if those that are making

that, do you?

Mr. KILLORN: Of course, my lord, I see the weakness of the constitution because the language is very general.

The CHAIRMAN: The language is very economical, and these two particulars I have mentioned would have to be observed.

Mr. KILLORN: To know what the history of the cotton industry is before you make.

The CHAIRMAN: You have practically to set up a company. It may be that the cotton industry is in such a condition that it is drawing its goods on its own home market as well as making its profit by selling to foreign countries where it makes money left.

Mr. KILLORN: I got from that last some support for my construction of the certificate.

The CHAIRMAN: Still, on the whole they are paying dividends and have been continuing as the years have gone on.

Mr. KILLORN: Commercially for companies.

The CHAIRMAN: They are paying one-hundred of one per cent.

Mr. KILLORN: They are not necessarily paying a portion all individual items of output, and it was only thirty-five cents in fact that paying dividends in 1904.

The CHAIRMAN: That is not the point. You have paid the dividends in respect of the total capitalization.

Mr. KILLORN: Yes, that is right.

The CHAIRMAN: You must read everything by that.

Mr. KILLORN: The way I put it is like this. If the only company business in the province (actually making are Quebec Income, and if there had not been

profits are making such comparatively small profits, then the certificate which is given must be construed not in the way in which I quite agree it was intended to be construed but in an individual way by the exporter when he makes his shipment; because if it is a general certificate on the basis of the experience of the whole industry--I do not say on the basis of that industry --I do not see how that certificate could be given.

The COMMISSIONER: Neither do I. If your facts are correct, if these goods are sold at less than cost of production and secondly, at less than the home market's selling price, how could the exporter certify to the contrary ?

Mr. KELLOCK: It is giving him a soft place to fall.

The COMMISSIONER: Better let him stand.

Mr. KELLOCK: I would refer Your Lordship to the last part of paragraph 21.

The COMMISSIONER: The fact remains that westill have to convince the proper department that there is actual dumping, and you have not done so yet.

Mr. KELLOCK: I wish Your Lordship to note the last part of paragraph 21:

> "In this same connection it should be noted that for the purpose of investigating the accuracy of all invoices of textiles from Great Britain and the rest of Europe the department has three investigators, and that investigations are only made 'when there is a complaint or when an invoice that looks suspicious is noticed.'"

I submit that the staff cannot cover the situation that exists, with all kinds of invoices coming along.

> "There is also some evidence for a period of something over a year on the extent to which

profits are making such enormously small profits, then the restrictions which is given must be considered not in the way in which I quite agree it was intended to be construed but in an individual way by the supervisor in issues his judgment; because if it is a general restriction on the basis of the exchange of the country--I do not say on the basis of the industry--I do not see how that restriction could be given.

The Commissioner: Just one so. If your figures are correct, if these goods are sold at less than cost of production and secondly, at less than the home market's selling price, how could the exporter certify to the contrary ?

Mr. Bennett: It is giving him a soft place to fall.

The Commissioner: Rather let him stand.

Mr. Bennett: I would rather that [illegible] hard place of [illegible].

The Commissioner: The fact remains that we still have to convince the proper department that there is actual dumping, and you have not done so yet.

Mr. Bennett: I wish your honour to make the last [illegible].

In this same connection it should be noted that for the purpose of investigation the [illegible] of all invoices of textiles from [illegible] the most of course the government has those investigators, and such investigations are only made when there is a complaint or when an investigation [illegible].

[illegible]

"United States mills will sell below their cost of production in either their own or foreign markets. The Department of National Revenue in 1931 made a study of the cost of production of cotton fabrics in the United States, and, after fixing a reasonable advance over the costs found, to cover selling cost and profit, published values for appraisal of imports (Exhibit 828, 11824 .19-23, Exhibit 848). It must be clear that the values fixed by the department represent the best available information as to the normal cost of production, cost of selling and profit in the United States so that the extent to which any fabric would have been re-appraised would be the extent to which American mills could have dumped into Canada below normal and reasonable levels of profitable operation. The exhibits show that the re-appraisal varied from time to time but the greatest extent towhich it is indicated these cloths could have been dumped, in each example exhibited, was

	Extent of re-appraisal ¢ per yard	Exhibit No.
Grey fabrics	2.28	829
	2.60	831
	2.00	832
Bleached fabrics	4.49	839
	3.59	842
Piece dyed fabrics	4.79	843
	4.19	845
Printed fabric	4.09	846
Yarn dyed fabric	3.15	849
	4.54	853

It is in fact in evidence that the action of the department in enforcing Exhibits 828 and 848

"United States cotton mills will meet before their own [illegible] of competition in [illegible] or foreign markets. The Department of National Revenue in 1[illegible] made a study of the cost of production of cotton fabrics in the United States, and, after taking a reasonable advance over the costs found, to cover selling cost and profit, published prices [illegible] (Report of Income Tax Act, [illegible] .iv-83, Sessional Paper 0-10). It must be clear that the values fixed by the Department represent the best available information as to the normal cost of production, cost of selling and profit in the United States so that the extent to which [illegible] be the extent to which American mills could now [illegible] levels of profitable operation. The available [illegible] show that the re-opening of the mills from time to time but the greatest extent towards it is in [illegible] disclosed these clothes could have been [illegible].

[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

"was to prevent the American manufacturer from dumping into Canada as a consequence of the below-cost level of selling prices (12157 .2-11) and that they were cancelled when American selling prices finally rose above cost of production (12159 .18-24).

How necessary this re-appraisal was can be judged from the extent to which American mill margins fell at that time. The lowest print cloth margin in each year was:

1925	19.69¢
1930	13.05¢
1931	10.89¢
1932	9.54¢
1933	9.16¢
1934	13.06¢
1935	13.39¢

(Exhibit 932,pps.66-67)

There is another aspect of the trade in imports from the United States of the fabrics and manufactured articles known in the trade as "style fabrics" which should be noted. Each spring and fall selling season in the United States is accompanied by the introduction of certain new styles which are peculiar to that season and once these styles have lost their style value in the United States market it has been the practice to reduce prices of the remaining stocks of this style merchandise to clear out the lines. Because the United States is the source of many of the
4 styles also sold in Canada and also because of the geographical position of the United States, each style season there precedes by a period of some weeks the corresponding style season in Canada (11892 1 15-1-22), so that by the time that a

[illegible] dumping into Canada as a consequence of the higher cost level of selling prices (Ibid, 8-11) and that they were concealed when American selling prices finally rose above cost of production (Ibid, [illegible]).

[illegible] how necessary this re-adjustment was can be judged from the extent to which American mill margins fell at that time. The lowest [illegible] cloth margin in each year was:

1926	10.00%
1930	16.00%
1931	[illegible]
1932	8.44
1933	[illegible]
1934	10.00
1935	[illegible]

(Exhibit 350, [illegible])

There is another aspect of the trade in imports from the United States of the finished and manufactured articles known in the trade as "style fabrics" which should be noted. [illegible] spring and fall selling season in the United [illegible] is accompanied by the introduction of certain new styles which are peculiar to that season and [illegible] these styles have last longer than other styles which [illegible] called staple. Normal [illegible] the production [illegible] reduce prices of the remaining stocks of this style merchandise to clear out the lines. [illegible] the United States is the source of many of the styles also sold in Canada and also because of its geographical position of the United States, [illegible] style [illegible] [illegible] (Ibid, 1 [illegible]), [illegible] [illegible]

"particular group of styles should be at their peak of demand in Canada they will have already passed that peak on the United States market and in many cases it would be more advantageous for the United States manufacturers to clear out these lines in Canada at greatly reduced prices rather than dispose of them in the United States in a market which has already absorbed all it can of this seasonal merchandise. The effect in Canada is that Canadian mills, which to a large extent, are, in any case, forced to follow the lead of the United States in their styling, find themselves meeting competition from these cleared-out lines in the United States at a time when the peak of the season for this merchandise in Canada has only arrived. It was stated in evidence (P.7838 1-17) 'The moment it loses its novelty the price is immediately reduced in a country like the United States who are producing a tremendous amount of merchandise and they would reduce their prices far below what we could produce it at here.'"

The COMMISSIONER: You say it is an actual fact that a large part of the international trade has been on the home market basis and not on export prices. That is, you mean that to-day a large part of the export market prices are lower than the home market values ?

(16450 follows)

"particular group of region seems to at least pose a demand in Canada they will have already passed that week on the United States market and in many cases it would be more advantageous for the United States manufacturers to carry out these lines in Canada if previously produced prices rather than dispose of them in the United States in a market which has already absorbed all its share of this seasonal merchandise. The effect is as is that Canadian mills, which to a large extent, are, in any case, forced to follow the lead of the United States in their styling, find themselves receiving complaints from trade clearance-out lines in the United States at a time when the peak of the season for this merchandise in Canada has only arrived. It was stated in evidence (p.[illegible] 1-17) "the moment it hurts its morality the price is immediately reduced in a country like the United States who are producing a tremendous amount of merchandise and they would reduce their prices far below what we could produce it for here."

The CHAIRMAN: You say it is in evidence that a large part of the international trade has been on the home market basis and not on export prices. That is, you have that to-day a large part of the export trade [illegible] the land market values ?

MR. KELLOCK: That is the constant pressure and tendency, yes, my lord.

"Owing to the vast variety of combinations of constructions"--

THE COMMISSIONER: How about all our dumping provisions? Don't they get around that?

MR. KELLOCK: Well, they are aimed there.

THE COMMISSIONER: But they don't strike?

MR. KELLOCK: Well, my lord, it is a tremendous job. As I say --

"Owing to the vast variety of combinations and constructions"--

THE COMMISSIONER: Do you make that as a submission? Does the evidence support that?

MR. McRUER: There is no evidence on it.

THE COMMISSIONER: You see, you submit it for my consideration, and it is a very important thing if it is true, that a large part of the international trade in textiles is done on what you intend to mean as less than the home market values.

MR. KELLOCK: That is my submission, my lord. From the standpoint of evidence the only things I can point to are what I have already set out as a matter of evidence.

THE COMMISSIONER: Alright, go on.

MR. KELLOCK: "Owing to the vast variety of combinations of constructions and raw materials used it is submitted it will be recognized that customs investigating officers, no matter how

DR. KILLOCH: That is the Commerce Commerce and Industry, Yes, my Lord.

"Owing to the vast variety of combinations of constructions"--

THE COMMISSIONER: Do what all you charging practicalomy Sam's they are around lately

DR. KILLOCH: Well, they are also [illegible].

THE COMMISSIONER: Not that Sam's walls!

MR. KILLOCH: Well, my lord, it is a tremendous job. As I say --

"Owing to the vast variety of combinations and constructions"--

THE COMMISSIONER: Do you mean that on a [illegible]? Does the evidence support that?

MR. McGUIGAN: There is no evidence on it.

THE COMMISSIONER: The [illegible], you admit it is [illegible] [illegible], but it is a very important [illegible] it was, that a large part of the [illegible] in textiles is done on what you intend to mean as [illegible] the same [illegible] values.

DR. KILLOCH: That is my submission, my lord. From the [illegible] of evidence the only things I am [illegible] in the [illegible] I have already put as a [illegible] evidence.

THE COMMISSIONER: Alright, go on.

DR. KILLOCH: "Owing to the vast variety of combinations or constructions and the [illegible] [illegible] [illegible] it is [illegible] Mr. customs investigating officer, no matter how

"competent, cannot get at the facts of import textiles, while the general horizontal methods of producing and marketing textiles abroad permit the signing of certificates of fair market values at export prices actually lower than cost, plus a reasonable advance for selling cost and profit."

Now, that is my submission, my lord.

THE COMMISSIONER: That is the one you made a while ago.

MR. KELLOCK: Yes, my lord.

"Where a manufacturer can increase his production by selling in an export market at the cost of raw materials, labour and part of his overhead, it is an advantage for him to do so, because (1) he does not injure his home market selling prices, (2) and since he is able to increase the ratio of his operations and thereby distribute his overhead over a greater volume of production he is able to reduce his general level of costs".

I have simply attached there, my lord, a number of tables which your lordship may find of interest, and which have been referred to and I will have occasion to refer to again.

THE COMMISSIONER: You mean these three mentioned in the next paragraph?

MR. KELLOCK: Yes, the ones I mention in the next paragraph. Now, my lord, on the question of foreign export values, as I say, I cannot say any more from the standpoint of specific evidence than I have said, but when your lordship considers the serious condition

"consumers, cannot get at the costs of import
textiles, which the general investigation commission
of Pakistan has accordingly penalized several times by
the signing of certificates of fair market values
at export prices actually lower than cost, plus
a reasonable advance for selling cost and profit."

Now, that is my submission, my lord.

THE COMMISSIONER: That is the one you made a while
ago.

MR. [illegible]: Yes, my lord.

"Where manufacturer can increase his production
by selling in an export market at the cost of raw
materials, labour and part of his overhead, it is
an advantage for him to do so, because
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he is able to reduce his general level of costs".

I have simply attached that, my lord, a number of
tables which your learnings may find by interest, and
which have been referred to and I will have something
to refer to again.

THE COMMISSIONER: Do you know these particulars
in the case [illegible]?

MR. [illegible]: Yes, the ones I mention in the case
[illegible]. Now, as I say, the position of foreign
[illegible], as I say, I cannot see any more than
the standard of quality which [illegible].
But that just certainly [illegible] the average [illegible]

of the British cotton industry for a number of years past your lordship will see that there is certainly very great pressure there to sell goods.

THE COMMISSIONER: Yes; well, according to what you seem to think they are not making money anyway at it. They are selling even on their home market at less than cost and they are exporting at less than cost.

MR. KELLOCK: Yes.

THE COMMISSIONER: It seems to me that is a very fatal policy.

MR. McRUER: Competition from that source will soon be eliminated.

THE COMMISSIONER: Yes, I should think so.

MR. KELLOCK: Yes, your lordship, you would think so, but, as I say, it is not in evidence but it is pretty common knowledge. There is plenty of literature that is available from English sources on the subject to that very effect.

MR. McRUER: Probably they are satisfied with lower dividends over there than they are here.

MR. KELLOCK: There is a little book along that line, which is very pertinent, my lord. It is called "Lancashire Under The Hammer" by a man very familiar with the industry. His name is --

THE COMMISSIONER: Is that a very recent book?

MR. McRUER: That was published after the war.

MR. KELLOCK: 1929, I think, my lord, and the author is Bowker, "Lancashire Under The Hammer". One cannot read that without seeing the powerless condition

of the British cotton industry for a number of years past your lordship will see that there is certainly very great pressure there to sell goods.

THE COMMISSIONER: Yes; well, according to what you seem to think they are not making money anyway at it. They are selling even on their home market at less than cost and they are exporting at less than cost.

MR. ASHLOCK: Yes.

THE COMMISSIONER: It seems to me that is a very fatal policy.

MR. McMURR: Competition from that source will soon be eliminated.

THE COMMISSIONER: Yes, I should think so.

MR. ASHLOCK: Yes, quite reasonably, you might think so, but, as I say, it is not in evidence but it is pretty common knowledge. There is plenty of literature that is available from English sources on the subject to that very effect.

MR. McMURR: Probably they are satisfied with lower dividends over there than they are here.

MR. ASHLOCK: There is a little book along that line, which is very pertinent, my lord. It is called "Lancashire Under The Hammer" by a man very familiar with the industry. His name is --

THE COMMISSIONER: Is that a very recent book?

MR. McMURR: That was published after the war.

MR. ASHLOCK: 1927, I think, or 1928, with the author in Oxford, "Lancashire Under the Hammer". You cannot read that without seeing the low-flow mentality

in which the industry is.

MR. McRUER: I suggest that they lost their export trade because during the War they gave over all their attention to the domestic market, and then other countries got into their export markets and took them away from them. As a matter of fact, I read a comment just the other day; the president of Lloyd's Bank within the last three or four weeks was warning English exporters against that danger right at the present time, that they were going to lose their export markets if they didn't pay more attention to them. They were too busy selling in their home market, selling too easily there.

MR. KELLOCK: As these various mills went out of business the machinery was sold at scrap prices and set up in the East, and brought into competition with the English industry.

MR. McRUER: There is none of that exported into Canada from the East.

THE COMMISSIONER: Even if all that is true, Mr. Kellock, what more can you do than is being done right now? You have the Customs Act and the Customs Tariff Act with ample provisions to cover all sorts of dumpings of one fashion and another. Well, you say perhaps the department enforcing it is not properly manned, not properly staffed?

MR. KELLOCK: I think they are called on to do more than they can physically possibly do.

MR. McRUER: You haven't had enough protection from the department.

in order the industry in.

MR. MOWAT: I suppose that they lost their export trade because during the war they gave over all their attention to the domestic market, and then other countries got into Eastern markets and took them away from them. As a matter of fact, I read a comment just the other day; the president of Lloyd's Bank within the last three or four weeks was warning English exporters against that danger right at the present time, that they were going to lose their export markets if they didn't pay more attention to them. They were too busy selling in their home market, selling too easily there.

MR. ARMSTRONG: As these various mills went out of business the machinery was sold at some prices and set up in the East, and brought into competition with the English industry.

MR. MOWAT: There is none of that exported into Canada from the East.

THE COMMISSIONER: Even if all that is true, Mr. Allison, what more can you do than is being done right now? You have the Customs Act and the Customs Tariff Act with ample provisions to cover all sorts of dumping of one Position and another. Well, you say perhaps the department enforcing it is not properly manned, and properly staffed?

MR. [illegible]: I think they are [illegible] that they are [illegible] enough.

MR. MOWAT: The [illegible] enough [illegible] from the department.

THE COMMISSIONER: If the thing is of such vast dimensions, as you state, it ought to be fairly easily ascertainable, you know.

MR. KELLOCK: Your lordship can take the situation in the United States in 1932 that called forth exhibits 828 and 848.

THE COMMISSIONER: I know, but it was ascertained and dealt with.

MR. KELLOCK: That is only an instance of what was going on.

THE COMMISSIONER: You say the entire British industry now is doing the same thing and has been for some time.

MR. KELLOCK: I submit so. From this same exhibit, 600, my lord, reference five, statement ~~6~~ 55, in 1929 British exports of cotton piece goods were in million square yards -- well, it would be 3,671,000,000 square yards in 1929.

THE COMMISSIONER: British exports.

MR. KELLOCK: Yes, my lord, of cotton piece goods, 3,671,000,000.

MR. McRUER: Which page are you referring to?

MR. KELLOCK: In 1935 it had fallen to 1,949,000,000. Now, if one goes back to 1913 --

THE COMMISSIONER: That is a 33% fall.

MR. KELLOCK: If one goes back to 1913, the year just before the war, it is not shown on this exhibit, but the exports at that time were approximately 7,000,000,000 square yards.

The first table, my lord, which is attached there

THE COMMISSIONER: Is that value in or out of the
discussion, as you state, it seems to be fairly
ascertainable, you know.

MR. KELLOCK: Your Lordship can take the situation
in the United States in 1922 that called forth exhibit
325 and 326.

THE COMMISSIONER: I know, but it was ascertainable
and really with.

MR. KELLOCK: That is only an instance of what
going on.

THE COMMISSIONER: You say the entire British
industry now is doing the same thing and has been for
some time.

MR. KELLOCK: I submit so. Now with
exhibit, 606, my lord, reference five, statement & 60,
in 1929 British exports of cotton piece goods were
in million square yards -- well, it would be
3,671,000,000 square yards in 1929.

THE COMMISSIONER: British exports.

MR. KELLOCK: Yes, my lord, of cotton piece goods
3,671,000,000.

MR. McRUER: Which page are you referring to?

MR. KELLOCK: In 1925 it had fallen to
1,949,000,000. Now, if one goes back to 1913 --

THE COMMISSIONER: That is a 2.5 fall.

MR. KELLOCK: If one goes back to 1913, the year
just before the War, it is not shown on this exhibit,
but the exports at that time were
7,000,000,000 square yards.

The Ziyan 1928, my lord, which is attached to

is called supplement one. It has not got the 1936 figures, but I have the 1936 figures --

THE COMMISSIONER: Just before we leave that; If there has been a decrease in the exports to the British outside market in the way you say, that in itself is not sufficient reason for throwing water on the drowning rat, so long as they do not break our laws. So long as they are not underselling as compared with their home market and their cost of production that is the end of it. It does not matter how they have lost.

MR. KELLOCK: Quite so, but when you lessen their volume their costs go up and they lose their market, and that is the reason for the dis-organization of the industry.

THE COMMISSIONER: Well, the industry won't exist very long in that case.

MR. KELLOCK: Well, I am not going to express any hope, my lord. One aspect of the matter is this, my lord, that my friend in calling your lordship's attention in his factum to the sections in the statutes which deal with that sort of thing, for instance, the section which enables the department where they find a specific article being sold here below the foreign cost of production, to appraise it and either put on a fixed value or add something to the invoice price. My friend says that is a power that the department ought not to have.

Now, my submission is there is no other way of dealing with a situation of that kind when it

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1. valid supplement one. It has not got the 1930 figures, but I have the 1929 figures --

THE COMMISSIONER: Just before we leave that; if there has been a decrease in the exports to the British outside market in the way you say, that in itself is not sufficient reason for throwing water on the drowning rat, so long as they do not break our laws, so long as they are not undercutting or competed with their home market and their cost of production that is the end of it. It does not matter how they have lost.

MR. KELLOCK: quite so, but when you lessen their volume their costs go up and they lose their market, and that is the reason for the dis-support of the industry.

THE COMMISSIONER: Well, the industry won't exist very long in that case.

MR. KELLOCK: Well, I am not going to argue that, hope, my lord. One aspect of the matter in time, my lord. [illegible] attention in his factum to the sections in the statutes which deal with that sort of thing, for instance, the section which enables the department where they find a specific article being sold here below the foreign cost of production, to stabilize it and either put on a fixed value or add something to the invoice price. My friend says that is a power that the [illegible] to have.

[illegible] is there is no other way of dealing with a situation of that kind when it

develops except the machinery of that kind. You cannot call Parliament together to deal with sales of a fabric which drop below the cost of production. My submission is --

THE COMMISSIONER: Well, Parliament has dealt with it.

MR. KELLOCK: They have.

THE COMMISSIONER: Parliament says you shall not sell your goods here at less than the cost of production or at less than your home market value. If you try to we will increase the value for duty purposes. That is what Parliament has said. What does Mr. McRuer say?

MR. KELLOCK: My friend says that he does not think that the department --

THE COMMISSIONER: Now, the question is whether Parliament has said it in such a way that it lends to abuse, whether it has constructed a piece of machinery that has bad results.

MR. McRUER: My argument was not that it was preventing dumping, but that they raised them to the extent they excluded them from this market. That was my argument. It is an entirely different thing if they raise it to the cost of production and then let them compete in this market, but to raise it above that so it had the effect of increasing the duties by 100% and excluding them from the market, that is a different thing altogether.

MR. KELLOCK: That is a rather heavy charge against the department because no place in the Statute

develops except the machinery of that kind. I am cannot call Parliament together to deal with cases of a tariff which drop below the cost of production. My submission is --

THE COMMISSIONER: well, Parliament has dealt with it.

MR. ASHCOM: They have.

THE COMMISSIONER: Parliament says you shall not sell your goods here at less than the cost of production or at less than your home market value. If you try to we will increase the value for duty purposes. That is what Parliament has said. But does Mr. Mosser say

MR. KELLOCK: My friend says that he does not think that the department --

THE COMMISSIONER: Now, the question is whether Parliament has said it in such a way that it leads to abuse, whether it has constructed a place of machinery that has had results.

MR. McRUER: My argument was not that it was preventing dumping, but that they raised them to the extent they excluded them from this market. That was my argument. It is an entirely different thing if they raise it to the cost of production and then let them compete in this market, but to raise it above that so it had the effect of increasing the duties by 100% and excluding them from the market, that is a different thing altogether.

MR. [illegible] That is a [illegible] against the department because we place in the [illegible]

is the department authorized to put on a value that will exclude it. The department is only authorized to put on values that will ensure that at the time you come to pay the regular duties you have got a figure that is not below the foreign cost of production. In other words, you have got a figure that includes the cost of production and includes a reasonable advance for selling cost and profit, and it is from that point on that the regular duties shall apply.

Now, in addition to what my friend says now, as I understood him when he was arguing in chief, he said if that power is given to the department --

THE COMMISSIONER: Well, it is there.

MR. KELLOCK: It is there. He says the importer does not know, he cannot go to the Statute and find in percentage or dollars and cents what the duty is. My submission is you cannot cover a situation of that kind in any other way than the statute has covered it. If you want to simplify the language so as to make it more understandable that is quite what we all want but my submission is that the idea which is incorporated in these provisions is the only proper way of dealing with it, because this situation develops over night, and it develops in a few articles. From time to time the situation changes and the costs go back up to proper levels, but the department is there. They can have these things reported to them. They can investigate them and then the machinery is there to apply the proper figure, and my submission is that is the best way of dealing with it, and that the legislation

is the department authorized to put on a value that will exclude it. The department is only authorized to put on values that will ensure that at the time you come to pay the regular duties you have got a figure that is not below the foreign cost of production. In other words, you have got a figure that includes the cost of production and includes a reasonable allowance for selling cost and profit, and it is from that point we take the regular duties [illegible].

Now, in addition to what my friend says now, as I understood him when he was speaking in chief, he says if that power is given to the department --

THE COMMISSIONER: Well, it is there.

MR. MILLOOK: It is there. He says the Imperial does not know, he cannot go to the statute and find in percentage or dollars and cents what the duty is. My submission is you cannot cover a situation of that kind in any other way than the statute has covered it. If you want to simplify the [illegible] more reasonable that is quite what we all want but my submission is that the line which is [illegible] in these provisions is the only proper way of dealing with it, because this situation changes over [illegible] and it happens in a few months. Then the time the situation changes and the costs go back up to proper levels, but the damage is done. That has been time and time reported to them. They can investigate also and then the machinery is there to adjust the proper figure, and my submission is that is the [illegible] way of dealing with it, and that the legislation

is wise legislation.

THE COMMISSIONER: Is it section 43 you have in mind now?

MR. KELLOCK: Section 43 is one of them.

MR. McRUER: It is 36(2).

MR. KELLOCK: Well, 43 is one--

MR. HOOPER: That is worked a different way.

MR. McRUER: 36(2) you are dealing with now.

MR. KELLOCK: I am speaking of both, with all respect to my friends.

THE COMMISSIONER: Read 36(2)again.

MR. HOOPER: 36; there is no 36(2) now.

MR. KELLOCK: (2) is --

"Provided that the value for duty of new or unused goods shall in no case be less than the actual cost of production of similar goods at date of shipment direct to Canada, plus a reasonable advance for selling cost and profit, and the Minister shall be the sole judge of what shall constitute"--

MR. HOOPER: No, that is the old one, Mr. Kellock; pardon me.

MR. KELLOCK: Am I reading the wrong one?

MR. McRUER: That is as it was before the 1926 amendment.

MR. KELLOCK: I think my friend has it in his brief as it is now, page 63.

". The value for duty of new or unused goods shall in no case be less than the actual cost of production of similar goods at date of ship-

Mr. Wilson Lapointe.

THE COMMISSIONER: Is it section 46 you have in mind?

MR. KELLOCK: Section 46 is one of them.

MR. McPHEE: It is 36(2).

MR. KELLOCK: Well, it is --

MR. HOUGH: That is worked a different way.

MR. McPHEE: 36(2) you are dealing with now.

MR. KELLOCK: I am speaking of both, with all respect to Mr. Hough.

THE COMMISSIONER: Read 36(2)again.

MR. HOUGH: 36; there is no 36(2) now.

MR. KELLOCK: (2) is --

"Provided that the value for duty of new or manufactured goods shall in no case be less than the actual cost of production of similar goods at date of shipment direct to Canada, plus a reasonable advance for selling cost and profit, and the Minister shall be the sole judge of what shall constitute --"

MR. HOUGH: No, that is the old one, Mr. Kellock; pardon me.

MR. KELLOCK: Am I reading the wrong --

MR. McPHEE: That is as it was before the 1926 amendment.

MR. KELLOCK: I think my friend has it in his hand as it is now, page 8.

-- that value (Interval of what is actual cost of production of similar goods at date of ship-

"ment direct to Canada, plus reasonable advance for selling cost or profit, such advance not to be greater than that which in the ordinary course of business under normal conditions of trade is adequate in the case of goods similar to the particular goods under consideration by manufacturers or producers of goods of the same class or kind in the country of export when sold for home consumption."

THE COMMISSIONER: You refer to 63?

MR. KELLOCK: Page 63.

THE COMMISSIONER: I had 62; alright. That last part beginning "such advance not to be greater" was intended to hold the discretion down to reasonable bounds, wasn't it?

MR. KELLOCK: Yes, my lord. Nobody could object to that, and I also had in mind section 43 which covers a wider territory than 36. 43 is at the bottom of page 65.

" If at any time it appears to the satisfaction of the Governor in Council on a report from the Minister that goods of any kind not entitled to entry under the British Preferential Tariff or any lower tariff are being imported into Canada either on sale or on consignment, under such conditions as prejudicially or injuriously to affect the interests of Canadian producers or manufacturers"--

THE COMMISSIONER: Now, what does that mean?

MR. KELLOCK: Well, it covers a pretty wide territory, my lord.

"such effect to Canada, plus reasonable advance for marking and so forth, which advance may be greater than that which in the ordinary course of business would cover all expenses in connection in the case of goods similar to the particular goods under consideration by manufacturers or producers of goods of the same class or kind in the country of export and which has been sold in the ordinary course of trade."

THE CHAIRMAN: You refer to 66?

MR. FERGUSON: Page 65.

THE CHAIRMAN: I beg your pardon. That last part beginning "such advance not to be greater" was intended to hold the discretion down to reasonable bounds, wasn't it?

MR. [illegible]: Yes, my lord. [illegible] to that, and I also had in mind section 42 which covers a wider territory than 66. 42 is at the bottom of page 65.

"If at any time it appears to the satisfaction of the Governor in Council on a report from the Minister that goods of any kind not entitled to [illegible] under the [illegible] lower tariff are being imported into Canada [illegible] on sale or on consignment, under such conditions as [illegible] interests of Canadian producers or manufacturers [illegible] MR. [illegible]: Yes, I was [illegible] MR. [illegible]: No, I haven't a copy with [illegible] interest, my lord.

THE COMMISSIONER: If they can sell anything at all they are affecting our interests prejudicially.

MR. KELLOCK: It has never been applied, so far as I know, my lord, in that wide sense.

THE COMMISSIONER: Are you sure?

MR. KELLOCK: Well, so far as I know.

THE COMMISSIONER: Well, there must have been a lot of ink wasted over section 43.

MR. KELLOCK: Your lordship can see where it has been applied. Take the $1.25 fixed value that was applied to rayons prior to the 1st of January, 1936. Now, section 36(2) would not cover that in the case of a country like Japan.

THE COMMISSIONER: Do you say that these two sections together, supplementary to each other as they are, are compatible with the principle of reasonable competition in the interests of the consumer? It seems to look entirely to the interests of the Canadian producer, especially 43.

MR. KELLOCK: My lord, take 36(2), and 36(2) as I understand it --

THE COMMISSIONER: In that section the value shall not be less, not that it shall be so and so, but shall not be less than so and so.

MR. KELLOCK: The basis of 36(2) is that --

THE COMMISSIONER: It is not 36(2) now.

MR. KELLOCK: 36 -- that Parliament has established certain rates of duty; then, you have a special situation where somebody is deliberately trying to sell in this country at prices below the cost of

THE COMMISSIONER: It has not said anything at all they are effecting our interests prejudicially.

MR. HALDOCK: It has never been applied, so far as I know, my lord, in Australian cases.

THE COMMISSIONER: Are you sure?

MR. HALDOCK: Well, so far as I know.

THE COMMISSIONER: Well, there must have been a lot of ink wasted over section 46.

MR. HALDOCK: Your lordship can see where it has been applied. Take the $1.35 fixed value that was applied to rayons prior to the 1st of January, 1936. Now, section 46(2) would not cover that in the case of a country like Japan.

THE COMMISSIONER: Do you say that these two sections together, supplementary to each other as they are, are compatible with the principle of reasonable competition in the interests of the community? It seems to look entirely to the interests of the industry concerned, essentially so.

MR. HALDOCK: My lord, take 36(2), and 36(3) as I understand it —

THE COMMISSIONER: Is that saying the value shall not be less, can that be said to be and so, and shall not be less than so and so.

MR. HALDOCK: The basis of 36(3) is that —

THE COMMISSIONER: Is it not 36(1) now.

MR. HALDOCK: No — that followed the conditional within terms of duty; then, you have a special situation where country is deliberately trying to sell in will country at prices below its cost of

production in another country, or owing to conditions which have arisen in the exporting country the general level of sales there are below cost of production, such as we had in the United States in 1932. In either of those cases, if that is going on, then the home industry does not get the benefit of the tariff rates which Parliament has set because those rates are to apply upon the figure which includes cost and selling cost and profit. Now, 43 covers a wider territory than that. It covers a situation where imports are coming along from a country such as Japan where their normal costs of production are not comparable at all to domestic costs at all.

THE COMMISSIONER: Why do you say it covers that only because that is not what it says.

MR. KELLOCK: I say it covers a wider territory than 36(2), and it would cover many other things. That is one thing that comes into my mind at once.

THE COMMISSIONER: 43 covers all the territory except that covered by the British preferential tariff. Once you get into that outside range then if anything comes in which is going to affect the Canadian producers injuriously or prejudicially off you go and the Minister may then fix any value he likes. Isn't that what was done?

MR. KELLOCK: Yes.

THE COMMISSIONER: Take, for instance, you have to-day certain lines of silk hosiery where our home producers have about 98% of the market. There are certain schedules and tariff rates. Well, supposing

[illegible] in another country, or other by countries which have arisen in the exporting country the general level of sales there are below cost of production, such as we had in the United States in 1930. In either of those cases, if that is going on, then the home industry does not get the benefit of the tariff rates which Parliament has set because those rates are [illegible] and selling cost and profit. Now, do covers a wider territory than that. It covers a situation where imports are coming along from a country such as Japan where their normal costs of production are not comparable at all to domestic costs at all.

THE COMMISSIONER: Why do you say it covers that only because that is not what it says.

MR. ANDROS: I say it covers a wider territory than 20(2), and it would cover many other things. The [illegible] is one thing that comes into my mind at once.

THE COMMISSIONER: do covers all the territory except that covered by the British preferential tariff, once you get into that outside range then if anything comes in which is going to affect the Canadian [illegible] industry or injuriously affect them or and the Minister may then fix any value he likes. Isn't that what was done?

MR. [illegible]: Yes.

THE COMMISSIONER: Yes, for instance, you have many certain items of milk industry which are [illegible] producers also about 10% of the market. There are certain [illegible] and tariff items. Well, supposing

the next year you find they have only got 90% of the market would you say that the imports have prejudicially and injuriously affected that 8% and therefore you must set a duty under 43?

MR. KELLOCK: You might have difficulty in convincing anybody.

MR. McRUER: It would depend on how willing they are to be convinced.

THE COMMISSIONER: It puts all that power in the hands of the Governor in Council.

MR. KELLOCK: On the report of the Minister.

THE COMMISSIONER: Of the Minister; he is the only one.

MR. KELLOCK: It was under that section that the $1.25 a pound was put on.

THE COMMISSIONER: The contention about all these sections is one of principle. Mr. McRuer says, as I understand it, they are not compatible with what he thinks is the right principle having regard to the interests of the consumer, which, in the long run, are the interests of the country, the principle of reasonable competition in making purchases.

MR. KELLOCK: Well, my lord, I will have to deal with that when I --

THE COMMISSIONER: You see, I don't know what you say, but you say anyhow they should be left as they are.

MR. KELLOCK: Yes, my lord.

MR. McRUER: They ought to be used more than they are, as I understand you.

ROBT. BRYDIE
CERTIFIED STENOGRAPHER
TORONTO - CANADA

the best proof you that they have only put up at the proved would you say that the lawyers were practically and intentionally attempting that of and therefore you must not a duty under 82%

MR. ROBINSON: You might have difficulty in convincing anybody.

MR. MORGAN: It would depend on how willing they are to be convinced.

THE COMMISSIONER: It puts all that power in the hands of the Governor in Council.

MR. ROBINSON: On the report of the minister.

THE COMMISSIONER: Of the minister; he is the only one.

MR. ROBINSON: It was under that section that the $1.25 a pound was put on.

THE COMMISSIONER: The contention about all these questions is one of principle. Mr. Morgan says, as I understand it, they are not compatible with what he thinks is the right principle having regard to the interests of the consumer, which, in the long run, are the interests of the country, the principle of reasonable competition in making purchases.

MR. ROBINSON: Yes, my lord, I did have in mind with that when I --

THE COMMISSIONER: You see, I don't know what you say, but you do agree that should be taken into account.

MR. ROBINSON: Yes, my lord.

MR. MORGAN: They begin to be sold only that [illegible] as I understand it.

MR. KELLOCK: No, I am not saying that at all at the moment. I am saying they ought to be left there, however you express them, because they do provide the machinery which enables the government to deal with a situation which arises over night, which may be temporary and which you cannot assemble Parliament to deal with, to fix a specific rate of duty to deal with it. It provides the machinery to deal with a situation of that kind when it arises.

Now, in regard to my friend's argument, which your lordship mentions, about reasonable competition. I am going to deal with that a little more fully when I come to the tariff section, but, my lord, I will just indicate my point in advance, and that is this, that when your lordship says on the basis of reasonable competition that is the language that is in the Ottawa agreement of 1932.

THE COMMISSIONER: Yes.

MR. KELLOCK: Now, if you are going to have reasonable competition --

THE COMMISSIONER: I am not saying whether or not it is a proper position. I am telling you that is Mr. McRae's point of view, and if you want to meet it you can meet it.

MR. KELLOCK: I just want to indicate in advance, my lord, that there are two things. You have a basis of reasonable competition on the basis of relative costs of production as between Great Britain and Canada. You also have --

THE COMMISSIONER: Not only Great Britain, but under

MR. KELLOCK: No, I am not saying that at all at the moment. I am saying they ought to be left there, however you exercise them, because they do provide the Minister with authority to deal with a situation which arises over night, which may be temporary and which you cannot assemble Parliament to deal with, to fix a specific rate of duty to deal with it. It provides the machinery to deal with a situation of that kind when it arises.

Now, in regard to my friend's argument, which I am going to deal with that a little more fully when I come to the tariff section, but, my lord, I will just indicate my point in advance, and that is this, that when your lordship says on the basis of reasonable expectation that is the language that is in the Ottawa agreement of 1932.

[illegible]

MR. KELLOCK: Now, if you are going to have reasonable expectation --

THE COMMISSIONER: I am not saying whether or not it is a proper position. I am [illegible] in Mr. Meager's point of view, and if you want to [illegible] it.

MR. KELLOCK: I just want to indicate in advance my lord, that there are two [illegible] [illegible] as between Great Britain and Canada. The [illegible] --

[illegible]

the British preferential tariff the British Dominions.

MR. KELLOCK: Under the British preferential rate; you also have the British preferential principle which means that those entitled to those rates are to have a preference over those not so entitled.

THE COMMISSIONER: You mean the rates are lower.

MR. KELLOCK: Yes; in other words, in order to have lower rates for that class you have got to have higher rates for the others, and you cannot have people who are entitled only to come in here under the intermediate and general rates on the basis of competition if you are going to give the British exporter a preference.

THE COMMISSIONER: So then reasonable competition must of necessity apply only to the British importer.

MR. KELLOCK: Insofar as the items dealt with in the Ottawa agreement are concerned, and there are a great many textile items in that agreement, and I want to refer to that a little later on.

THE COMMISSIONER: Insofar as all outside importers are concerned they are not to have reasonable competition privileges.

MR. KELLOCK: Not if you are going to give the British importer here a preference, my lord. You have to protect him and there therefore must be an advance in the case of intermediate and general rates.

MR. McRUER: No, no.

THE COMMISSIONER: So you must make the position of the exporter in the other country what you might call unreasonable.

MR. RUTLEDGE: Under the British preferential rate; you also have the British preferential principle which means that those entitled to those rates are to have a preference over those not so entitled.

THE COMMISSIONER: You mean the rates are lower.

MR. RUTLEDGE: Yes, in some cases, to mean to have lower rates for that class you have got to have higher rates for the others, and you cannot have people who are entitled only to come in here under the intermediate and general rates on the basis of competition if you are going to give the British exporter a preference.

THE COMMISSIONER: Do your remarks in regard to must of necessity apply only to the British importer.

MR. RUTLEDGE: Inasmuch as the items dealt with in the Ottawa agreement are concerned, and there are a great many textile items in that agreement, and I was to refer to that a little later on.

THE COMMISSIONER: Insofar as all outside importers are concerned they are not to have reasonable consideration?

MR. RUTLEDGE: Not if you are going to give the British importer here a preference, my lord. You have to distinguish him and there therefore must be an advantage to the rate on intermediate and general rates.

MR. BOURGET, K.C.: Do you must make the position of the advantage of the British industry what you might call protection.

MR. KELLOCK: You have got to give the domestic industry here some protection.

THE COMMISSIONER: On what page, Mr. McRuer, of your factum was this dealt with?

MR. McRUER: It is on page 302 of the Customs Tariff Act.

MR. KELLOCK: What is that?

MR. McRUER: Page 302 of the Customs Tariff Act.

MR. KELLOCK: What is it you are referring to?

MR. McRUER: The Ottawa Agreements.

THE COMMISSIONER: This is a French version; you are not referring to the French version.

MR. McRUER: No, my lord.

THE COMMISSIONER: You have it some place in your factum.

MR. McRUER: Yes, I know; it is quoted in two different places, article 11, my lord.

THE COMMISSIONER: It says that--

"--the tariff shall be based on the principle that protective duties shall not exceed such a level as will give United Kingdom producers full opportunity of reasonable competition on the basis of the relative cost of economical and efficient production"--

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Well then, you say it follows from that that the unfortunate country that comes under the intermediate or general tariff must not have the opportunity of reasonable competition?

MR. BLOCKER: I am not yet to give the Canadian interpretation.

THE COMMISSIONER: Mr. McKay, Mr. McKay, if you have the file kindly.

MR. McKAY: It is on page 302 of the Customs Tariff Act.

MR. BLOCKER: What is that?

MR. McKAY: Page 302 of the Customs Tariff Act.

MR. BLOCKER: What is it you are referring to?

MR. McKAY: The Ottawa Agreements.

THE COMMISSIONER: This is a French version; you are not referring to the French version.

MR. McKAY: No, my lord.

THE COMMISSIONER: You have it some place in your factum.

MR. McKAY: Yes, I know; it is quoted in two different places, article II, my lord.

THE COMMISSIONER: It says that--

"--the tariff shall be based on the principle that protective duties shall not exceed such a level as will give United Kingdom producers full opportunity of reasonable competition on the basis of the relative cost of economical and efficient production"--

MR. BLOCKER: Yes, my lord.

THE COMMISSIONER: Well then, you say it follows from that that the minimum tariff must cover under the intermediate or general tariff must not have the opportunity of reasonably competitive

MR. KELLOCK: No, my lord, not from that; it follows from another article in the same treaty that I want to refer your lordship to later.

THE COMMISSIONER: Where is that article?

MR. KELLOCK: It is article nine, but your lordship has not been referred to it yet, and I am dealing with it when I come to my section on tariffs.

THE COMMISSIONER: I thought you were dealing now with this question.

MR. KELLOCK: No, my lord, that subject just came up. I said I was just going to indicate in advance what my argument was.

THE COMMISSIONER: You want to turn off now, and come back to it.

MR. KELLOCK: I want to come back to it later, my lord. I have a section on tariffs but I want to deal with section "G" first, which is the section which deals with Japan, and which comes, I think, more logically first.

THE COMMISSIONER: What about some chance of raising some revenue for the country? I thought the Customs Tariff was something to raise revenue with. Apparently you must not have even reasonable competition from abroad.

MR. KELLOCK: When your lordship sees the volume of stuff which is coming in under the British preferential --

MR. McRUER: Most of which pays no duty.

MR. KELLOCK: No, no, my friend makes extravagant statements; that isn't true at all.

MR. MERCER: No, my lord, not from that; it follows from another article in the same treaty that I want to refer your lordship to later.

THE COMMISSIONER: Where is that article?

MR. MERCER: It is article nine, but your lordship has not been referred to it yet, and I am dealing with it when I come to my section on tariffs.

THE COMMISSIONER: I thought you were dealing now with this question.

MR. MERCER: No, my lord, that subject just came up. I said I was just going to indicate in advance what my argument was.

THE COMMISSIONER: You want to turn off now, and come back to it.

MR. MERCER: I want to come back to it later, my lord. I have a section on tariffs but I want to deal with section "c" first, which is the section which deals with Japan, and which comes, I think, more logically first.

THE COMMISSIONER: What about some chance of raising some revenue for the country? I thought the Customs Tariff was something to raise revenue with. [illegible]

MR. MERCER: Then your lordship sees the volume of stuff which is coming in under the heading international —

THE COMMISSIONER: [illegible]

MR. MERCER: [illegible]

MR. McRUER: I have a statement here that is ready now.

THE COMMISSIONER: It goes back how far?

MR. HOOPER: 1907; it is ready now, my lord.

THE COMMISSIONER: Well, we better have it some time to-day, and then Mr. Kellock can have it for his consideration.

MR. KELLOCK: There are lots more items in the tariff than the textile items, my lord, which contribute to the revenue, and textile items do as well. Now, my lord, I want to deal with Japan, first with the rayon duties.

THE COMMISSIONER: Where are you now?

MR. KELLOCK: Section "G", my lord.

THE COMMISSIONER: You are skipping "F"?

MR. KELLOCK: Yes, I want to take section "G" first. I think it comes more logically in my argument, my lord.

"Immediately prior to the coming into effect of Exhibit 401, which is the letter dated December 26, 1935 from the Prime Minister and Secretary of State of Canada to the Japanese Minister to Canada, the Canadian duties against importations of artificial silk fabrics from Japan were calculated as follows:"

Under item 561 the fixed value for duty purposes was a minimum of $1.25 per pound, and that was an Order in Council under section 43 of the Customs Act, and the duties were --

THE COMMISSIONER: Pardon me a moment; oh yes,

MR. MUNRO: I have a statement here that is ready now.

THE COMMISSIONER: It goes back for ?

MR. MCCRAE: 1907; it is ready now, my lord.

THE COMMISSIONER: Well, we better have it some time to-day, and then Mr. Kellock can have it for his consideration.

MR. MUNRO: There are lots more items in the tariff than the textile items, my lord, which contribute to the revenue, and textile items do well. [illegible] fixed with the royon duties.

MR. MUNRO: Section "G", my lord.

THE COMMISSIONER: You are skipping "F" first. I think it comes more logically in my opinion, my lord.

Immediately prior to the coming into effect of Exhibit 601, which is the letter of the December 26, 1905 from the Prime Minister and Secretary of State of Canada to the Imperial Minister to Canada, the Canadian duties against importations of [illegible] [illegible] [illegible] [illegible] item 501 the fixed value for duty purposes was claimed at $4.25 per pound, and that was on [illegible] under section 40 of the Customs Act, and the duties were —

THE COMMISSIONER: Further on a [illegible]

1931, I thought it was later than that. That is right, is it, 1931?

MR. KELLOCK: Yes, my lord. The duties were first an ad valorem duty of 40% less 10% discount by reason of the French Treaty, or 36% net, a specific duty of 40 cents per pound, excise of 3% on the duty paid value, and then a dumping duty on imports of 50% on $1.25, and that is based on section 6 of the Customs Tariff Act, and then a surtax was in effect immediately prior to the 1st of January, 1936, and that was 33-1/3% on the fixed value.

THE COMMISSIONER: That surtax was the one that was put into effect some time in August, 1935, wasn't it?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Under what provision; is that under 43?

MR. KELLOCK: I have that some place.

THE COMMISSIONER: Because it was unquestionably a pure matter of retaliation, wasn't it?

MR. KELLOCK: Yes.

THE COMMISSIONER: That just shows you how these sections can be used.

MR. McNUER: There is a provision that gives them the right to do that, where goods of Canada are discriminated against by any other country, and in this case the Japanese had put on a 50% tax on certain Canadian goods.

MR. KELLOCK: It has been there, of course, for a great many years, and your lordship will recall in the

1921, I thought it was later than that. That is

[illegible], on 21, 1927

MR. [illegible]: Yes, my lord. The duties were fixed an ad valorem duty of 40% less 10% discount by reason of the French Treaty, or 36% net, a specific duty of 40 cents per pound, equals of 5% on the duty paid value, and then a dumping duty on imports of 30% on $1.85, and that is based on section 6 of the Customs Tariff Act, and then a surtax was in effect immediately prior to the 1st of January, 1926, and that was 32-1/3% on the fixed value.

THE COMMISSIONER: Not surtax was the one that was put into effect some time in August, 1925, wasn't it?

MR. [illegible]: Yes, my lord.

THE COMMISSIONER: Under what provision; is that under 42?

MR. [illegible]: I have that here place.

THE COMMISSIONER: Because it was unquestionably a pure matter of retaliation, wasn't it?

MR. [illegible]: Yes.

THE COMMISSIONER: That just shows you how these settings can be used.

MR. [illegible]: There is a provision that gives the right to do that, where goods of Canada are discriminated against by any foreign country, and in this case the Dominion had put on a duty on certain Canadian goods.

MR. [illegible]: It has been there, of course, for quite some time, and your Lordship will recall in the

evidence it was used as against Germany, I think.

THE COMMISSIONER: It is so as to deal with discriminatory measures by other countries.

MR. KELLOCK: Yes, my lord. There is a section, and I think I mention it a little later on. I haven't got it in my mind.

MR. HOOPER: Section 7, my lord, of the Customs Tariff.

THE COMMISSIONER: Of the Customs Tariff; alright.

MR. KELLOCK: "By reason of Exhibit 401, the duties on and after the 1st of January, 1936, on artificial silk fabrics from Japan became"— and the duty is calculated on the proclaimed value of the yen of 39.5 cents. The ad valorem was 40% less 10%, or 36%, the specific duty 40 cents per pound and an excise duty of 3%.

THE COMMISSIONER: The excise duty of 3% is levied after all these duties --

MR. KELLOCK: On the duty paid value, my lord, yes. Then, there is a currency dumping duty --

"--under the provisions of section 6, subsection 9(a) of the Customs Tariff Act, being approximately the difference between the invoice value of the goods at the proclaimed rate of exchange of 39.5¢ per yen and the invoice value at the current rate of exchange. In figuring these two amounts 9% is deducted from the invoice value as this represents Japanese excise tax which does not apply to exports, and accordingly the invoice value must be adjusted by eliminating

evidence it was used as against Germany, I think.

THE COMMISSIONER: It is so as to deal with discriminatory measures by other countries.

MR. MACGREGOR: Yes, my lord. There is a provision, my lord, section 17 of 1919, later on. I have got it in my mind.

MR. MOGREN: Section 7, my lord, of the Customs Tariff.

THE COMMISSIONER: Of the Customs Tariff; air-craft.

MR. MACGREGOR: My reason of exhibit 401, the duties on and after the 1st of January, 1926, on artificial silk fabrics from Japan because and the duty is calculated on the proclaimed value of the yen or 29.9 cents. The ad valorem was 45% less 10%, or 35%, the specific duty 40 cents per pound and an excise duty of 5%.

THE COMMISSIONER: The excise duty of 5% is levied after all these duties --

MR. MACGREGOR: On the duty paid value, my lord.

MR. Then, there is a Germany dumping duty --

"--under the provisions of section 6, subsection (4) of the German Tariff Act, being equivalent to the difference between the invoice value of the goods at the proclaimed rate of exchange of 23.9% per yen and the invoice value at the normal rate of exchange. In figures this two amounts 9% is deducted from the invoice value as this represents Japanese excise tax which does not exist in Japan, and accordingly the invoice value of the goods

"this tax before the invoice value is computed at either the proclaimed rate or the current exchange rate.

According to the evidence of Mr. Hooper it was the surtax which existed in the latter part of 1935 which kept out Japanese importations. To be exact, the surtax was in force from the 5th August to the 31st December, 1935".

THE COMMISSIONER: Mr. Kellock, am I to understand from now on that you are contending that the present protection against Japanese importations is not high enough?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Alright.

MR. KELLOCK: "As shown by the actual importations, Mr. Hooper's evidence is not quite accurate in this respect".

I mean this is just a matter that Mr. Hooper overlooked at the moment.

"After the surtax was put on and after the expiry of the regulations, which allowed goods en route at the time the surtax was imposed to be entered free of surtax up to November 15, 1935, there were importations of Japanese artificial silk fabrics between that date and the 31st December, 1935".

So that they were not absolutely shut out in the period from when the freedom of entry by reason of goods being en route expired on the 15th of November up to the end of the year.

"this tax before the invoice value is converted at either the proclaimed rate or the current exchange rate.

According to the evidence of Mr. Hooper it was the surtax which existed in the latter part of 1935 which kept out Japanese importations. To be exact, the surtax was in force from the 8th August to the 31st December, 1935".

THE COMMISSIONER: Mr. Allison, am I to understand from now on that you are contending that the present protection against Japanese importations is not high enough?

Mr. ALLISON: Yes, my lord.

THE COMMISSIONER: Alright.

MR. MACLOON: "As shown by the actual importations, Mr. Hooper's evidence is not quite accurate in this respect".

I mean this is just a matter that Mr. Hooper overlooked at the moment.

"After the surtax was put on and after the coming of the regulations, which allowed goods on route at the time the surtax was imposed to be entered free of surtax up to November 15, 1935, there were importations of Japanese artificial silk fabrics between that date and the 31st December, 1935".

So that they were not absolutely shut out in the period from the freedom of entry by reason of goods being on route acquired on the 15th of November or on the 31st of the year.

THE COMMISSIONER: The surtax did not apply to goods en route.

MR. KELLOCK: No.

THE COMMISSIONER: That is why they were not shut out.

MR. KELLOCK: But that period expired on the 15th of November and after that it did apply.

THE COMMISSIONER: After that they were intended to be shut out.

MR. KELLOCK: Yes, but there were importations; that is my point in that paragraph. Between the 15th of November, 1935 and the end of the year there were importations, not much, but there were some.

> " Before the surtax was put on, artificial silk from Japan was being imported into Canada. It is interesting to note that during this period the value per pound of these imports was 70¢. At the present time 'the same type of goods being imported today' is imported at considerably lower invoice prices."

Now, that quotation there --

THE COMMISSIONER: That is, lower than 70 cents.

MR. KELLOCK: Yes, my lord. That quotation is taken from the document I refer to next, the Appraiser's Bulletin of the 10th of January, 1936, which was cancelled after being only a short time in force, and that Appraiser's Bulletin showed that the invoice value at that time was around 24 or 25¢, and in the preceding year had been 70 cents.

THE COMMISSIONER: The surtax did not apply to goods on route.

MR. KELLOCK: No.

THE COMMISSIONER: That is why they were not sent out.

MR. KELLOCK: But that period expired on the 15th of November and after that it did apply.

THE COMMISSIONER: After that they were intended to be sent out.

MR. KELLOCK: Yes, but there were importations; that is my point as that progresses. Between the of November, 1935 and the end of the year there were importations, not much, but there were some.

" Before the surtax was put on, artificial silk from Japan was being imported into Canada. It is interesting to note that during this period the value per pound of these imports was 70¢. At the present time 'the same type of goods being imported today' is imported at considerably less landed prices.'

Now, that quotation there --

THE COMMISSIONER: That is lower than 70 cents.

MR. KELLOCK: Yes, my lord. That quotation is taken from the document I refer to next, the [illegible] of the 12th of January, 1937, [illegible] was cancelled after being only a short time in force, and that Commissioner's Bulletin showed that the [illegible] value at that time was around 24 or 28¢, and in the preceding year not even 30 cents.

" A comparison between Exhibits 125 and 126 illustrates the extent of the reduction in duties at the 1st of January, 1936. These exhibits deal with one particular fabric, namely, a 27" piece dyed plain taffeta. According to Exhibit 125, the duty upon one pound of this material prior to the 1st of January, 1936, amounted to $1.53½¢ apart from surtax which brought the total amounts payable to the Government up to approximately $1.95. Exhibit 126 shows that as a result of the reduction in duties the amount payable was reduced to approximately 64¢."

Now, that is the extent of the reduction, and as I point out later on, my lord, there is a new value of the yen in force now, since the 1st of January, 1937, because that is set. The rate now in operation is 35¢ in place of 39.5.

THE COMMISSIONER: It was 39.5 last year?

MR. KELLOCK: 39.5 last year and it is now 35 cents, and the figure which will operate next year is now set by reason of the fact that the figure which will operate next year is based on the average of the preceding five years.

THE COMMISSIONER: Including this year?

MR. KELLOCK: No, ending on the 31st of December, 1936, my lord.

THE COMMISSIONER: That goes on until 1938, isn't it?

MR. KELLOCK: Yes, and I think I am right in saying that will be around 30 cents, but I haven't got the

illustrates the extent of the reduction in duties at the last of January, 1926. These exhibits deal with one particular fabric, namely, a yard piece dyed plain taffeta. According to Exhibit 125, the duty upon one pound of this material prior to the last of January, 1926, amounted to $1.5644 apart from surtax which brought the total amounts payable to the Government up to approximately $1.95. Exhibit 126 shows that as a result of the reduction in duties the amount payable was reduced to approximately 64¢."

Now, that is the extent of the reduction, and as I point out later on, my lord, there is a new value of the yen in force now, since the last of January, 1927, because that is set. The rate now in operation is 56¢ in place of 89.5.

THE COMMISSIONER: It was 89.5 last year?

MR. KELLOCK: 89.5 last year and it is now 56 cents, and the figure which will operate next year is now set by reason of the fact that the figure which will operate next year is based on the average of the preceding five years.

THE COMMISSIONER: Including this year?

MR. KELLOCK: No, ending on the 31st of December last, of 1926.

THE COMMISSIONER: That goes on until 1928, isn't it?

MR. KELLOCK: Yes, and I think I can make it very plain that will be around 50 cents, but I haven't got the

exact figure.

Now, the effects of the reduction in duties in increasing the volume of imports is shown in the exhibits which I set out there, and these importations cover a wide range of goods. Exhibit 523 is composed of the goods being offered for sale by Mr. Fairchild of Montreal who is the agent of Mitsui & Company.

"These samples cover a wide variety of types, patterns and colours of better class goods of fine quality".

THE COMMISSIONER: Have we any evidence of actual sales?

MR. KELLOCK: Not in the case of Mr. Fairchild, no, but in the case of the next exhibit we have, my lord, which is that of Fisher & Company who are probably one of the more important people in the import business. That is exhibit 1197. It shows the large variety of rayons, cottons, mixtures and silks.

THE COMMISSIONER: There should be a comma after cottons.

MR. KELLOCK: Yes, my lord, a comma.

"--shows the large variety of rayons, cottons, mixtures and silks being imported into Canada and carried in stock by A.B. Fisher & Company, Importers, of Toronto] since the 1st of January, 1936."

THE COMMISSIONER: Are you talking of Japanese cotton now, because we are on Japan?

MR. KELLOCK: Yes, my lord.

MR. McRUER: 8,200 yards.

very Liberte.

Now, the effects of the restriction in duties in increasing the volume of imports is shown in the exhibits which I put out there, and these importations cover a wide range of goods. Exhibit 388 is composed of the goods being offered for sale by Mr. Mandolis of Montreal who is the agent of Ritani & Company.

"These samples cover a wide variety of types, patterns and colours of better class goods of fine quality".

THE COMMISSIONER: Have we any evidence of actual sales?

MR. MACLOON: Not in the case of Mr. Figenbild, but in the case of the next exhibit we have, my Lord, which is that of Fisher & Company who are probably one of the more important people in the import business. That is exhibit 1397. It shows the large variety of rayons, cottons, mixtures and silks.

THE COMMISSIONER: There should be a corner after matters.

MR. MACLOON: Yes, my Lord, I mean.

"--shows the large variety of rayons, cottons, mixtures and silks being imported into Canada and carried in stock by A.E. Fisher & Company, importers, of Toronto; since the fall of January, 1948."

THE COMMISSIONER: Are you talking of imposes cotton now, because we are on rayon?

MR. MACLOON: Yes, my Lord.

MR. MACLOON: I'm just trying.

THE COMMISSIONER: Japanese cotton?

MR. McRUER: 8,200 yards.

MR. KELLOCK: I give the details of it down below, my lord.

THE COMMISSIONER: It is all from Japan?

MR. KELLOCK: All from Japan.

MR. McRUER: It is not stated whether they have sold them or not yet.

MR. KELLOCK: If my friend looks at the foot of the page, I am just coming to it. In rayons they imported 751,160 yards covering 26 lines. They sold in that year, for the period January to September, 1936, 555,560 yards.

THE COMMISSIONER: You have no money value of these goods?

MR. KELLOCK: The money value is in the exhibit, my lord, in every case.

MR. McRUER: About $60,000 worth.

MR. KELLOCK: Some of them I want to refer to because the exhibit is made up on the basis of all the particulars. There is a sample of the cloth and the prices at which they were sold.

THE COMMISSIONER: Well, we will adjourn for a while.

-- The Commission adjourned for a short recess.

(Page 16475 follows)

the commissioner present solely

as. number 6,000 pounds.

MR. KNILOCK: I give the details of it down below, my lord.

THE COMMISSIONER: It is all from Depew?

MR. KNILOCK: Yes, from Depew.

MR. McNURR: It is not stated whether they have sold them or not yet.

MR. KNILOCK: If my friend looks at the foot of the page, I am just coming to it. In round they sold in the year, for the period between to December, 1916, 300,360 pounds.

THE COMMISSIONER: You have no money value of these goods?

MR. KNILOCK: The money value is in the exhibit, my lord, in every case.

MR. McNURR: About $60,000 worth.

MR. KNILOCK: Some of them I want to refer to because the exhibits is made up on the basis of all the particulars. There is a sample of the stock and the volume of which they are made.

THE COMMISSIONER: Well, we will adjourn for a while.

— The Commission adjourned for a short recess.

(Hour 12.07 noon)

-- On resuming at 4.10 P.M.

MR. KELLOCK: I was dealing, my lord, with Exhibit 1197 at the foot of page 3. I had given your lordship the figures as to rayons. Rayon and cotton mixtures the imports were 92,400 yards, covering four lines, and the sales were 61,800 yards. The cotton imports of this concern were 8,200 yards and the sales were 2,160 yards. Cotton and silk mixtures the imports were 800 yards and the sales 200 yards. Silk, the imports were 190,980 yards and the sales 110,735 yards.

THE COMMISSIONER: What does that mean - silk?

MR. KELLOCK: That means natural silk, real silk.

THE COMMISSIONER: Did somebody say what the value of all these sales is? I think it was Mr. McRuer.

MR. McRUER: I made a rough calculation, $73,000. The way I worked it, was 10 cents a yard for the rayon--

THE COMMISSIONER: We do not know, as a matter of fact.

MR. McRUER: I don't think we have it.

MR. KELLOCK: In this same exhibit there is statement, shows list of sales of Japanese consignment goods from Toronto stock since the 1st of January 1936, and it is dated 14th October, and it covers the same period as covers in my factum, from the same exhibit. January to September, and the value is $191,870.

THE COMMISSIONER: Did that cover the same goods, this Fisher & Company?

MR. KELLOCK: Yes, he has it here by months.

-- in reading at 4.10 p.m.

MR. MILLER: I was reading, my lord, from AGRIC. 117 at the foot of page 3. I had given your lordship the figures as to rayons. Rayon and cotton mixtures the imports were 92,400 yards, covering four lines, and the sales were 81,500 yards. The cotton imports of fully woven were 8,000 yards and the sales were 4,100 yards. Cotton and silk mixtures the imports were 800 yards and the sales 800 yards. Silk, the imports were 190,300 yards and the sales 117,700 yards.

THE COURT REPORTER: Just does that mean - sales

MR. MILLER: That means a total sales, total sales.

THE COMMISSIONER: Has somebody any idea what the value of all these sales is? I think it was in.

MR. MILLER: I asked a Crown witness, yesterday. The way I worked it, was in terms a yard for the rayon--

THE COMMISSIONER: I do not know, as a matter of fact.

MR. MILLER: I don't think we have it.

MR. MILLER: In this same exhibit there is another, above list of sales of Japanese merchandise goods from Toronto stock since the 1st of January 1936, and it is across this section, and it covers the same period as covers in my factum, from the 1st January, to September, and the value is $141,070.

MR. COMMISSIONER: Are that more or less same goods,

MR. MILLER: I beg pardon?

List of sales of Japanese consignment goods from stock since January 1st, 1936.

MR. McRUER: They must be selling them at a lot higher price than they suggested they were selling them at. I worked it out at 10 cents. That must work out about 30 cents a yard.

MR. KELLOCK: 730,505 yards. That is what Fisher himself said he has sold, my lord.

SECRETARY WHITTLEY: Better have that Exhibit.

MR. KELLOCK: A number of witnesses called by counsel for the Commission were buyers for several retail selling organizations in Canada. Some of these witnesses said that the distance from Canada of the Japanese manufacturer and the delay involved in the execution by the Japanese manufacturer of Canadian orders and the size of the order required was a handicap in the building up of Japanese importations into Canada. It is apparent that the policy adopted by Fisher and Company, (as revealed in Exhibit 1197 and evidence 6478) and no doubt by other Japanese importers, of ~~the~~ carrying stocks in Canada of a wide range of goods is designed to eliminate any disadvantage there may be in this regard. The consignment arrangement permits the Japanese exporter to finance the carrying of stocks in Canada and the size of the stocks is limited only by the desires of the Japanese exporters themselves. These buyers admitted that they secured a higher mark-up on these goods. This makes these goods attractive to these buyers without the

Any of sales of Japanese consignment goods from China since January 1st, 1937.

MR. WOODEN: They went to meet my price at a lot higher price than they suggested they were selling them at. I worked it out at 10 cents. That must work out about 50 cents a yard.

MR. MILLICOM: 750,000 yards. What is your Finance Minister said he has sold, by lots.

COMMISSIONER WOODSMITH: Bought one big lot.

MR. MILLICOM: A number of businessmen called by counsel for the Dominion were asked questions relating to importations in Canada. Some of them dwelled with that the distance from Canada of the Japanese manufacturer and the delay involved in the execution by the Japanese manufacturer of Canadian orders and the size of the order required was a handicap in the building up of Japanese importations into Canada. It is apparent that the policy adopted by Fisher and Company, (as revealed in Exhibit 1107 and evidence 6476) and no doubt by other Japanese importers, of not supplying stocks in Canada of a wide range of goods is designed to eliminate any competition that may be in your mind. The consignment arrangement permits the Japanese exporter to finance the carrying of stocks in Canada and the size of the order is limited only by the desires of the Japanese exporter themselves. These papers indicate that there was a larger sale-by on that goods. This was

consumer necessarily receiving any benefit from their lower costs.

"Exhibit 1197 shows also that in addition to stocks being carried in Canada goods are being imported in the grey and dyed and finished in Canada in accordance with the Canadian Customers' requirements. Pages 8 and 9 of this exhibit shows samples where goods were dyed and finished in Canada. This practice removes a further objection voiced by the retail buyers, namely, that the requirements of their customers for colours change very quickly in style fabrics and when colours were ordered in Japan the demand sometimes changed by the time the goods arrived in Canada. Colour requirements do not change rapidly on plain goods of course but they do on novelty or style fabrics. Where Japanese goods are imported into Canada in the grey and dyed and finished here in accordance with the Canadian Buyers' instructions this disadvantage is entirely removed.

It is to be noted that all of the above goods were imported ....."

That is, the goods imported by Mr. Fisher.

....."were imported on consignment. It is stated in the last paragraph of the letter dated October 14th, 1936, from A.B.Fisher & Company to the Commission, which is part of Exhibit 1197,

Exhibit 1197 shows also that in addition to shoes being sorted in Canada goods are being imported in the grey and dyed and finished in Canada in accordance with the Canadian Customs' requirements. Shoes 2 and 3 in that exhibit shows samples where goods were dyed and finished in Canada. This practice removes a further objection voiced by the retail trade, namely, that the requirements of their customers for colours change very quickly in style fashion and when colours were ordered in Japan the desired sensitives changed by the time the goods arrived in Canada. Colour requirements do not change rapidly on plain goods of course but they do on a variety of style factors. There appears [illegible] dyed and finished here in accordance with the [illegible] in multiply [illegible].

It is to be noted that all of the above [illegible] ....

[illegible] by Mr. Tizzo.

.... [illegible] in [illegible]. [illegible] shown in the last [illegible] of the letter [illegible] Exhibit 1196, from a [illegible]

that, 'no advantage exists, however, as regards our selling prices of consignment goods.....' and we thereby have no advantage in our selling prices over direct importers.' According to the evidence of the witness Kehl, who writes the letter, confirmed by that of Mr. Hooper, no currency dumping duties are paid to the Government of Canada on goods imported on consignment. This means, therefore, that while the consignment importer claims to sell to the Canadian Purchaser at the same price as though the goods had been imported not on consignment the Government of Canada, is paid no currency dumping duty on these consignment imports.

With regard....."

THE COMMISSIONER: Have we ever had any explanation about this question?

MR. KELLOCK: I attempt one a little later on.

THE COMMISSIONER: All right, we await your attempt.

MR. KELLOCK: And when Mr. Hooper gave evidence he said something and when my friend was presenting his argument there was a discussion as to section 6, sub-section 9 (a) of the Customs Tariff Act, which is the basis of the Currency Dumping Duty.

MR. McKUEN: The crux of this is that they must sell the goods here at such a price that dumping duty would not apply. That is, it must be a price above the fair market value, as sold for home consumption.

that, 'no advantage relates, however, to remote or selling prices of consignment goods.....' and so thereby bars no advantage in our selling prices over direct importers.' Turning to the evidence of the witness Kohl, the writer of the letter, confirmed by that of Mr. Hooper, no ordinary dumping duties are paid to the government of Canada on goods imported on consignment. This means, therefore, that while the consignment importer elects to sell to the Canadian purchaser at the same price as though the goods had been imported not on consignment the Government of Canada, is paid no currency dumping duty on these consignment imports.

Mr. Hooper.....

The Commissioner: Have we ever had any explanation about this paragraph?

Mr. Hooper: I attempt one a little later on.

The Commissioner: All right, we shall hear about it.

Mr. Hooper: And then Mr. Hooper gave evidence in this connection something and when my friend was presenting his argument there was a discussion as to section 5, subsection 9 (a) of the Customs Tariff Act, which is the section of the Canadian dumping Act.

Mr. Scott: The crux of this is that they must sell at a price that at least a price that dumping duty would not apply. That is, it must be a price above

MR. KELLOCK: No, that is different.

THE COMMISSIONER: Mr. Kellock is talking of currency dumping. There are so many different ways of dumping.

MR. MCRUER: I know but the price they must sell at here must be of such a price that the currency dumping duty would not apply. If they sold at a lesser price then the dumping duty would apply and the property in the goods are in the exporter in Japan.

THE COMMISSIONER: Supposing two shipments of goods came in at the same time - one with direct purchaser here with invoice showing a certain value and in the other case of consignment to a man like Fisher - same price, same goods, same value, then currency dumping charged on the one and not on the other.

MR. HOOPER: Only provided - if the selling price happened to be in Canadian funds.

THE COMMISSIONER: Never mind that.

MR. HOOPER: There might be a case where there would be no currency dumping duty.

THE COMMISSIONER: Supposing both cases the same?

MR. HOOPER: And selling price to purchaser in Canada was in the Japanese yen, there would be currency dumping duty collected on the sale.

THE COMMISSIONER: Would not that allow the man who gets the goods to sell them so much cheaper?

MR. HOOPER: No, my lord, Section 5 of Section 6 of the Customs Tariff Act provides for shipments

Mr. Pitcher: So, that is different.

THE COMMISSIONER: Mr. Mullock is talking of smuggling. There are so many little out ways of smuggling.

Mr. Mullock: I know but the price there must exist. It here must be of such a price that the currency duaging duty would not apply. If they sold at a lower price than the duaging duty would apply and the property in the goods are in the exporter in Japan.

THE COMMISSIONER: Supposing two shipments of goods came in at the same time - one with direct purchaser here with invoice showing a certain value and in the other case of consignment to a San Line Mixer - same price, same goods, same value, then currency duaging charged on the one and not on the other.

Mr. Mullock: Only provided - if the selling price happened to be in Canadian funds.

THE COMMISSIONER: Never said that.

Mr. Mullock: There might be a case where there would be currency duaging duty.

THE COMMISSIONER: Supposing both cases has same Mr. Mullock: and selling price to purchaser in Japan was in the 1 p case yen, there would be currency duaging duty collected on the goods.

THE COMMISSIONER: Could not that alter the man who gets the goods to sell them as much cheaper?

Mr. Mullock: No, by law currency duaging

on consignment and if he evades duty by importing on ~~sea~~ consignment then the Customs Department may collect that dumping duty.

MR. KELLOCK: What do you mean by "evading dumping duty by importing on consignment"?

MR. HOOPER: Sells at a lower price than the purchaser in Canada could import direct.

MR. McRUER: He must sell at the same price as the purchaser in Canada could import direct or else he is subject to the dumping duty.

THE COMMISSIONER: That is not the way that Mr. Kellock seems to put it. He seems to put it the way I first put it to you. That is to say, the man who brings goods in on consignment has an advantage over he who buys.

MR. McRUER: He has got advantage that he can make some more money on them because he is really the vendor, the property is in the goods.

THE COMMISSIONER: He has that advantage?

MR. McRUER: Yes, but ---

THE COMMISSIONER: But the public has no advantage, they must pay the same price anyhow. So that the Canadian manufacturer is not prejudiced any more by the one than the other.

MR. McRUER: No.

MR. KELLOCK: I am not so sure about that.

THE COMMISSIONER: I am following out Mr. McRuer's argument. However, you say you are dealing with this

in warehouse, and it is evident that if importers are very anxious that the Customs Department may collect that Sampling duty.

MR. KANNON: What do you mean by levying Sampling duty by importing on consignment?

MR. MOORE: Sells at a lower price than the purchaser in Canada could import direct or else he is subject to the sampling duty.

THE CHAIRMAN: That is not the way that Mr. Hallfour seems to put it. He seems to put it the way I first put it to you. That is to say, the man who brings goods in on consignment has an advantage over the who buys.

MR. MOORE: He has got warehouse that he can use some more money on them because he is really the vendor, the property is in the goods.

THE COMMISSIONER: He has that advantage?

MR. MOORE: Yes, that ——

THE CHAIRMAN: But the public has no advantage, they must pay the same price anyhow. So that the [illegible] warehousemen [illegible] [illegible] the [illegible] [illegible].

MR. [illegible]:

MR. MOORE: I am [illegible].

THE CHAIRMAN: I am [illegible] Mr. [illegible]'s

later.

MR. KELLOCK: Yes, I deal with it right now. The situation is this, just as your lordship puts it, if goods are imported in here from Japan and they are purchased a currency dumping duty is levied and it is the difference between the current exchange rate and proclaimed rate. That is got to be paid. Now, the practice is if goods come in here on consignment that currency dumping duty is not paid, but the proviso is it is not paid so long as the importer here sells the goodsat the same price as though he had in fact paid the currency dumping duty. Now, ---

THE COMMISSIONER: If that is carried out, you do not suffer?

MR. KELLOCK: Well, I say this, my lord, on page 5- it is in the middle of the first paragraph there:

"With regard to the contention that this has no effect on the selling price to the Canadian consumer, it must be perfectly obvious that if goods are sold in Canada by the consignment importer at the same price as though the goods had been purchased outright and currency dumping duty paid, there is available in the hands of the consignment importer an amount equal to the currency dumping duty out of which he may pay his own costs of operating. If the consignment importer had to pay the currency dumping duty in the same way as the importer who purchased, the consignment

later.

MR. KILLOCK: Yes, I can give you that. [illegible] if goods are imported in here from Japan and they are purchased a currency dumping duty is levied and it is the difference between the current exchange rate and proclaimed rate. That is not to be paid. Now, the practice is if goods come in here on consignment that currency dumping duty is not paid, but the practice is it is not paid so long as the importer here sells the goods at the same price as though he had in fact paid the currency dumping duty. Now, ---

THE COMMISSIONER: If that is carried out, you do not suffer?

MR. KILLOCK: Well, I say this, my lord, on page 5- it is in the middle of the first paragraph there:

"With regard to the contention that this has no effect on the selling price to the Canadian consumer, it must be perfectly obvious that if goods are sold in Canada by the consignment importer at the same price as though the goods had been [illegible] paid, there is available in the hands of the consignment importer an amount equal to the customs duty [illegible] as he may pay it on the [illegible] consumption. If the consignment importer has to pay the currency dumping duty in the same

importer would have to add something to its laid-down cost to cover his operating expenses and profit. The effect at least is, therefore, that the price at which the consignment importers sell is lower than it would otherwise be..... "

In other words, he may sell at the same price as the person who---

THE COMMISSIONER: How can you require more of him than now, if he meets that requirement, if he sells at the same price as the person who buys - how can you say that he should sell at a higher price? Here are two articles for sale. One put on the market by the person who bought and the other who took them on consignment, so long as at the same price, how does it affect you more prejudicially than the other?

MR. KELLOCK: In this way - if I am a consignment importer and I can bring in goods on consignment without paying the currency dumping duty then I say that contains the element of fraud and there is no way, - if I want to rebate to my exporter I can do so, the man who ships to me in Japan ---

THE COMMISSIONER: Whose business is that?

MR. McRUER: He owns the goods.

THE COMMISSIONER: Yes. The principle of your protection is here, that the foreign article is not to be put on the market to tempt the Canadian consumer at a less price than so and so. As long as that is observed, as long as the consumer cannot get it any

importer would have to add something to its list-
down cost to cover his operating expenses and profit.
The effect at least is, therefore, that the price
at which the consignment importers sell is lower
than it would otherwise be..... "
In other words, he may sell at the same price as the
person who---

THE COMMISSIONER: How can you require more of him
than you, if he pays just precisely, if he gets
at the same price as the person who buys - how can you
say that he should sell at a higher price? Here are
two articles for sale. One put on the market by
the person who bought and the other who took them on
consignment, so long as at the same price, how does
it effect you more prejudicially than the other?

Mr. MULLOOKA: In this way - if I am a consignment
importer and I can bring in goods on consignment without
paying the necessary duties, then I am the best customer
the element of fraud and there is no way - if I want
to trade in my competitor's in Kobe, how can I compete
with me in Japan ---

THE COMMISSIONER: Whose owner is it then?

Mr. McGUIRE: He owns the goods.

Mr. [illegible]: Yes. The principle of your
question is here, that the foreign article is not to
be put on the market in Japan [illegible]
a lower price than the local one. We have no that is

cheaper - whether he buys it through a consignment agent or through an importer who sells - what is the difference to you?

MR. KELLOCK: The difference is this: That if goods can be brought in on consignment so as to avoid one of the duties, currency dumping duty, then the tendency will be for all or the bulk of goods to be brought in in that way.

THE COMMISSIONER: Suppose they are.

MR. KELLOCK: If they are and they do not pay that duty then the door is open to fraud as between the importer here and the exporter in Japan.

THE COMMISSIONER: What has that fraud to do with you? You are talking now for the industry, not for the Customs Department and the collection of its revenue. You are talking now for the protection of your industry.

MR. KELLOCK: Yes.

THE COMMISSIONER: And that protectionis given to you by insuring in the first place that the rates of duties imposable shall be so-and-so and, in the second place, that the value for duty shall be so-and-so. Now, as long as you get those two requirements met, where is your complaint?

MR. KELLOCK: I am coming to the value for duty, my lord.

THE COMMISSIONER: That is to say, if the value for duty, the selling price on the Canadian market, is the very same in both cases, goods brought in

cheaper - whether he buys it through a commission agent or through an importer who sells - what is the difference to you?

Mr. KELLOGG: The difference is this: that if [illegible] the [illegible] necessary foreign exchange, then the business will be for all or the bulk of goods to be brought in in that way.

THE COMMISSIONER: Suppose they are.

Mr. KELLOGG: If they are, and they do not pay that duty then the door is open to fraud as between the importer here and the exporter in Japan.

THE COMMISSIONER: What has that fraud to do with you? You are talking now for the industry, not for the Customs department and the collection of its revenue. You are talking now for the protection of your industry.

Mr. KELLOGG: Yes.

THE COMMISSIONER: And that protection is given to you by [illegible] to the first clause that the rates of duties impossible shall be so-and-so and, in the second place, that the value for duty shall be so-and-so. Now, as long as you get those two requirements met, what is your complaint?

Mr. Kellogg: I am coming to the value for duty, [illegible]

THE COMMISSIONER: That is to say, if the value for duty, was valued given on the Canadian country,

by consignee of goods brought in by reselling importer, what business is it of yours?

MR. KELLOCK: I am coming to the value for duty, I am working back to that.

THE COMMISSIONER: You admitted a moment ago that the price would be the very same in both cases.

MR. KELLOCK: Let me complete my argument, if I may. I think I can make my point clear in this way: If by bringing goods in on consignment you can bring them in and avoid that duty, then the tendency will be to bring all goods in in that way. Secondly, if that can be done, then by arrangement between the importer and the exporter the original invoice price can be based on the idea that no currency dumping duty is going to be paid. Then the invoice price will be lower because the exporter by arrangement can make the arrangement that he can get a refund or something of that kind.

THE COMMISSIONER: Suppose begets all sorts of refunds? Supposing Japanese man comes over and sells him self, what difference does it make to you as long as the selling price on the Canadian market is the one you want and ensured by the Act. Suppose the Japanese man came right over here himself with his cargo and brought it here and sold it. Then you would not be in any better or worse position than if he sold it to an agent to sell for him. The whole question is - are they compelled to sell at this

consignee of goods brought in by reselling importer, what business is it of yours?

MR. KILLOCK: I am coming to the value for duty, I am working back to that.

THE CHAIRMAN: You admitted a moment ago that the price would be the very same in both cases.

MR. KILLOCK: Let me complete my argument, if I may. I think I can make my point clear in this way: If by bringing goods in on consignment you can bring them in and avoid that duty, then the tendency will be to bring all goods in in that way. Secondly, if that can be done, then by arrangement between the importer and the exporter the original invoice price can be based on the idea that no currency dumping duty is going to be paid. Then the invoice price will be better between the exporter by arrangement can make the arrangement that he can get a refund or something of that kind.

Now (continuing), suppose "party-all-works" stunder? Supposing Japanese man comes over and sells him self, what difference does it make to you as long as the selling price on the specified market is the same as you work and received by the Act. Suppose the Japanese man comes right over here himself with his money and actually it here and sold it. Then you would say he is one rather or worse position than if he had it to go around to sell for him. The single question is - are they compelled to sell at fair

particular market price?

MR. KELLOCK: I say it cannot be enforced.

THE COMMISSIONER: Why? Suppose all Japanese goods were sold here on consignment, would that be an evil by itself?

MR. KELLOCK: I am only setting one against the other. I say this, my lord, that if no currency dumping duty is paid --- in the first place it is an anomaly - my position is there is no reason why it should not be paid. That is ---

THE COMMISSIONER: I can understand why it is the business of the Customs Department. I do not know whether it is your business, to use a commercial phrase. The Customs Department could say, "There is no reason why we should not get so much more money out of this man." How does it hurt you?

MR. KELLOCK: I cannot give your lordship any evidence, I can only say the tendency is this: that the Japanese exporter, if the goods be shipped in this way, he does not have to pay currency dumping and his invoice price, to begin with, is going to be that much lower, or some degree lower, and therefore that increases the competition from the very beginning. The sale is at a price which is lower than it otherwise would be. I quite agree that if it were carried out on the basis it should be carried out - that is, if I bring it on consignment and bring it in as direct purchase and I sell it at the same price, the result should be the same.

particular money prices.

Mr. FULLERTON: I may it seemed to undertake.

The CHAIRMAN (Mr. Hayden): Suppose all companies were well managed, would that be an evil by itself?

Mr. FULLERTON: I am only putting one against the other. I say this, my lord, that if no currency dumping duty is paid --- in the first place it is an anomaly - my position is there is no reason why it should not be paid. That is ---

The CHAIRMAN: If was guaranteed, for if it is the business of the Customs Department. I do not know whether it is your business, to use a commercial phrase. The Customs Department could say, "There is no reason why we should not get as much money out of this man." How does it hurt you?

Mr. FULLERTON: I cannot give your lordship any evidence, I can only say the tendency is this: that the Japanese exporter, if the goods be shipped in this way, he does not have to pay currency dumping and his invoice price, to begin with, is going to be that much lower, or some degree lower, and therefore that increases the competition from the very beginning. The mile is a mile and a mile is a mile. I quite agree that if it were carried out on the basis it would be carried out - that is, if I bring it on consignment and taking it is an always question as to

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TORONTO

But if I know on bringing it in on consignment I do not have to pay that tax, then I am going to bring everything in on consignment, and I am going to get a cheaper price to begin with.

THE COMMISSIONER: Unless you can show me selling price is going to be lower here ---

MR. KELLOCK: It will be lower here if the selling price in Japan is lower. I do not have to get so much from the goods. I do not pay as much duty ---

THE COMMISSIONER: Yes, but you see the Act says that the consignee does not pay this duty only where he puts goods on the market here at such a price.

MR. KELLOCK: Quite so.

THE COMMISSIONER: What more can you do? It does not say that he cannot throw the goods on the market at any price. What is that section?

MR. McRUER: It is sub-section 9.

THE COMMISSIONER: Just read it.

MR. KELLOCK: I have it, my lord, page 73 of my friend's brief.

MR. McRUER: It is 6, sub-section 5, and reads: as follows:

"If at any time it appears to the satisfaction of the Minister that the payment of the special duty by this Section provided for is being evaded by the shipment ~~eg~~ of goods on consignment without sale prior to such shipment, the Minister may

But if I know on bringing it in on consignment I do not have to pay that tax, then I am going to bring everything in on consignment, and I am going to get a cheaper price to begin with.

THE CONSULTANT: Unless you can show me anything price is going to be lower here ---

MR. MULLOCK: It will be lower here if the selling price in Japan is lower. I do not have to get so much from the goods. I do not pay as much duty ---

THE CONSULTANT: Yes, but you see the act says that the consignee does not pay this duty only where he puts goods on the market here at such a price.

MR. MULLOCK: Yes.

THE CONSULTANT: What more can you do? It does not say that he cannot throw the goods on the market at any price. What is that section?

MR. MULLOCK: It is subsection 6.

THE CONSULTANT: Just read it.

MR. MULLOCK: I have it, my lord, page 70 of my friend's brief.

MR. MOLSON: It is 6, sub-section 6, and reads as follows:

"If at any time it appears to the satisfaction of the minister that the payment of the special duty by some person concerned, or in some manner or by the adjustment of or payment of consignment duties

in any case or class of cases authorize such action as is deemed necessary to collect on such goods or any of them the same special duty as if the goods had been sold to an importer in Canada prior to their shipment to Canada."

And then 9 (a) deals with the sales on consignment, sub-section 9.

THE COMMISSIONER: What does it say?

MR. McRUER: It is the long one. Mr. Hooper points out to me that 9 (a) just deals with the sales on consignment to companies controlled by a company abroad.

MR. KELLOCK: No, deals with the whole thing.

MR. HOOPER: No, it does not.

MR. KELLOCK: Well, that is the way I read it. Currency dumping duty is right there in the sub-section.

THE COMMISSIONER: Yes, but when you get to the consignment part, "The Governor in Council may order and direct that in all cases of sales or consignments of goods imported into Canada, where the importer owns, controls or is interested in the business of the exporter, or the exporter owns, controls or is interested in the business of the importer, or the importer and exporter operates under a controlling or holding company, notwithstanding the expressed terms of the sale or consignment, the transaction shall be regarded as a sale and the actual selling price to the purchase in Canada shall be taken to be the value of the goods in the currency of the place or country of export

In any case or cases of annual agricultural land
section as is deemed necessary to collect an
such goods or any of them the same duties, only
as if the goods had been sold to an importer in
Canada prior to their shipment to Canada,"
and then 9 (e) deals with the sales on consignment,
sub-section 3.

THE CHAIRMAN: What does it say?

MR. MORROW: It is the long one. Mr. Doctor point
out to me that 9 (e) just deals with the sales on
consignment to companies controlled by a company abroad.

MR. A. MACNAB: No, deals with the whole thing.

MR. MORROW: No, it does not.

MR. MACNAB: Well, that is the way I read it.

MR. MORROW: Yes, but when you get to the
consignment part, "The Governor in Council may order
and direct that in all cases or classes or combinations
of goods imported into Canada, where the importer owns,
controls or is interested in the business of the
exporter, or the exporter owns, controls or is interested
in the business of the importer, or the importer
and exporter operates under a controlling or holding
company, notwithstanding the agreement thereon or the
sale or consignment, the Commissioner shall or may
on a case and the actual selling price to the purchaser
in Canada shall be taken to be the value of the goods

converted into Canadian currency at the current rate of exchange, or at the average current rate from time to time fixed by order of the Governor in Council, and shall be regarded as less than the fair market value of the goods when sold for home consumption, and the provisions of this Section shall apply and special or dumping duty shall bedeemed to apply equal to the difference between the value of the invoice computed at the current rate of exchange or at the average current rate from time to time fixed by order of the Governor in Council, and the value of such invoice computed at the rate of exchange for duty so ordered as aforesaid, or may be less than such difference as the Governor in Council may from time to time order and direct."

MR. KELLOCK: Well, that simply deals with certain special cases but at the beginning of that sub-section it says:

"Notwithstanding the provisions of any other law, the Governor in Council may, from time to time and as occasion requires, order and direct, subject to such exception as may be made, what shall be the rate of exchange fixed for any currency in computing the value for duty of goods imported into Canada from any place or country the currency of which is depreciated, and in case a sum in Canadian currency less than the invoice value

exercise the function assigned to the Minister under of exchange, or at the average current rate from time to time fixed by order of the Governor in Council, and shall be regarded as less than the fair market value of the goods when sold for home consumption, and the provisions of this section shall apply and special or dumping duty shall be assessed to apply equal to the difference between the value of the invoice computed at the current rate of exchange or at the average current rate from time to time fixed by order of the Governor in Council, and the value of such invoice computed at the rate of exchange for duty so ordered as aforesaid, or may be less than such difference as the Governor in Council may from time to time order and direct."

Mr. [illegible]: Well, that simply deals with certain special cases but at the beginning of that sub-section it says:

"Notwithstanding the provisions of any other law, the Governor in Council may, from time to time and as occasion requires, order and direct, subject to such exception as may be made, that shall be the rate of exchange fixed for any currency in computing the value for duty of goods imported into Canada from any place or country the currency of which is [illegible], and in case a sum in [illegible] then the invoice value

of the goods in the currency of the place or country of export, computed at the rate of exchange so ordered...."

That is, at the proclaimed rate.

"....be paid for the goods, the actual selling price of the goods to the importer shall be regarded as less than the fair market value of the goods when sold for home consumption, and the provision of this Section shall apply....."

MR. McRUER: That is a case of sale.

THE COMMISSIONER: That all deals with cases of sales.

MR. KELLOCK: Well, it says "Invoice value."

THE COMMISSIONER: It deals wholly with sales.

MR. KELLOCK: I do not see the word 'sales' there, my lord. It says: "Invoice value," that is all.

MR. HOOPER: Invoice value is referred to in Section 38 and 5 of the Customs Act, where it first --

MR. KELLOCK: Quite so.

THE COMMISSIONER: Invoice means the sale.

MR. KELLOCK: My lord, that may be so but in looking at the forms which are provided under the Act, Form (N.A.).

THE COMMISSIONER: Look, it says, "The actual selling price of the goods to the importer shall be regarded as less than the fair market value of the goods when sold for home consumption."

WOLF, BRYDIE
CONTRACTING STENOGRAPHERS
TORONTO - CANADA

AT THE CLOSE OF THE EVIDENCE OF THE VALUE OF

SECURITY OF WORTH, WHEREUPON THE CASE OF WITNESS

IS ADJOURNED....

That is, at the prevailing rate.

"....be paid for the goods, the actual selling price of the goods to the importer shall be regarded as less than the fair market value of the goods when sold for home consumption, and the provision of this section shall apply....."

MR. MORROW: That is a case of sale.

The Commissioner: That will deal with cases of sales.

MR. [illegible] Well, it says "Foreign value."

The Commissioner: It says exactly the same.

MR. FULLERTON: I do not see the word 'sales' there, by the way. It says: "Foreign value," that is all.

The Commissioner: Foreign value is defined in section 35 and 3 of the Customs Act, where it first --

MR. FULLERTON: Quite so.

The Commissioner: Always bring the Act -- I think, they only in one in looking at the forms which are provided under the Act.

MR. [illegible]:

The Commissioner: Look, it says, "The actual selling price of the goods to the importer shall be regarded as less than the fair market value of the goods when sold for home consumption."

That implies an importer paying a selling price - the actual selling price of the goods to the importer shall be regarded as less than the fair market value of the goods when sold for home consumption. That deals with the question of sale, not question of consignment at all, and then deals with consignment in certain cases, sales or consignment both where the importer owns or controls ---

MR. KELLOCK: Yet we have sub-section 5 on page 72 of my friend's Brief which provides:

"If at any time it appears to the satisfaction of the Minister that the paymentof the special duty by this section provided for its being evaded by the shipment of goods on consignment without sale prior to such shipment ....."

Well now, that rather---

THE COMMISSIONER: That would look as if consignment without sale was in itself an evasion.

MR. KELLOCK: Yes, it does. I don't know what this just means if it does not mean that.

MR. HOOPER: It could not have meant that because this section was not in the law at that time.

MR. McRUER: 9 was not in the law when Section 5 was introduced. 5 was there before 9.

THE COMMISSIONER: Well, I think it is time somebody got hold of this Act.

MR. KELLOCK: I think sub-section 1, has always been in the Act and you can find currency dumping duty

That implies an importer paying a selling price - the actual selling price of the goods to the importer shall be regarded as less than the full market value of the goods when sold for home consumption. That deals with the question of sale, not consideration of consignment at all, and then deals with consignment in certain cases, sales or consignment both above the importer owns or controls ---

MR. KELLOCK: Yet we have sub-section 3 on page 72 of my Friend's Price-Waters pamphlet.

"If at any time it appears to the satisfaction of the Minister that the purchaser the special duty by this section provided for its being evaded by the payment of goods on consignment without sale prior to such shipment ....."

and then, that rather---

THE COMMISSIONER: That would look as if consignment without sale was in itself an evasion.

MR. KELLOCK: Yes, it does. I don't know what this just means if it does not mean that.

MR. MOSTON: It could not have been that because this section was not in the law at that time.

MR. KELLOCK: 9 was not in the law when section 3 was introduced. 3 was there before 9.

THE COMMISSIONER: Well, I think it is time somebody got with it this out.

MR. KELLOCK: I have sub-section 3, the clause was

in section 1 if you want to analyse it. It is really the same thing as sub-section 9 (a).

THE COMMISSIONER: I think really your argument is that under the law as it is, in all cases, even cases of consignment, the currency duty should be collected.

MR. KELLOCK: Yes.

THE COMMISSIONER: And the Department is misinterpreting the Act if it does not collect it.

MR. KELLOCK: I do not know whether I can say that. I think you can argue on both sides of that Act, but what I do submit is that there is no reason that I can see why if I ~~bring~~ buy the goods and bring them in here I pay the duty and if I bring them in on consignment I do not. What is the reason for it? I submit there is no reasonable basis for that at all.

THE COMMISSIONER: Are you sure the law allows that? Because that sub-section 5 strikes me very impressively, although 9 seems to admit of such a thing as consignment and it only punishes it when ---

MR. KELLOCK: It provides for these special cases.

THE COMMISSIONER: You see it recognizes consignment- "The Governor in Council may order an direct that in all cases of sales or consignment of goods ...."

MR. KELLOCK: When you read 5 and you read 6 ---

THE COMMISSIONER: 5 seems to take it for granted that consignment means evasion.

in section 1 if you want to analyze it. It is really the same thing as sub-section 3 (c).

Mr. [illegible]: I think really your argument is that under the law as it is, in all cases, even cases of consignment, the currency only should be collected.

Mr. [illegible]: Yes.

The COMMISSIONER: And the Department is misinterpreting the act if it does not collect it.

Mr. MULOCK: I do not know whether I can say that. I think you can argue on both sides of that act, but what I do submit is that there is no reason that I can see why if I ship by the goods and axing them in bond I pay the duty and if I bring them in on consignment I do not. That is the reason for it? I submit there is no reasonable basis for that at all.

The COMMISSIONER: Are you sure the law allows that? [illegible] I rather [illegible] impressively, although I seems to admit of such a thing as consignment and it only provides it when ---

Mr. MULOCK: It provides for these special cases.

The COMMISSIONER: You see it recognizes consignment- "The Governor in Council may order an direct that in all cases of sales or consignment of [illegible] ....

Mr. [illegible]: Then you read 3 and you read 6 ---

The COMMISSIONER: 6 seems to take it for granted [illegible] sales.

MR. KELLOCK: "(6) If at any time it appears to the satisfaction of the Minister that any person owning or controlling or interested in a business in Canada and also in any other country, or any person carrying on a business in any other country and owning or controlling or interested in a business operating in Canada, and by reason thereof is enabled to import goods for further manufacture or assembling or for resale, and while complying with the legal requirement on importation disposes of such imported goods, whether in the form as imported or as further processed, assembled or manufactured, at prices below the duty paid value thereof ...."

THE COMMISSIONER: There, you get back to the selling price. Go on.

MR. KELLOCK: "....at prices below the duty paid value thereof as entered at Customs plus or including all charges upon the goods after shipment from the place whence exported directly to Canada, including sales, distribution and advertising costs, and plus, if any, the cost of processing, assembling or further manufacturing in Canada, the Minister may declare that goods of such class or kind were and are on importations subject to an additional special or dumping duty not exceeding 50 per cent, and authorize such action as is deemed necessary for the collection thereof."

THE COMMISSIONER: You see, it is an additional duty

in Canada and also in any other country, or any person carrying on a business in any other country and owning or controlling or interested in a business operating in Canada, and by reason thereof is needed to import goods for further manufacture or assembling or for resale, and while complying with the legal requirements on importation disposes of such imported goods, whether in the form in imported or as further processed, assembled or manufactured, at prices below the duty paid value thereof ...."

THE COMMISSIONER: There, you get back to the selling price. Go on.

MR. KNIGHT: "....at prices below the duty paid value thereof as entered at Customs plus or including all charges upon the goods after shipment from the place whence exported directly to Canada, including sales, distribution and advertising costs, and plus, if any, the cost of processing, assembling or further manufacturing in Canada, the exercise by Canada that power of such class or kind that may be in harmony with or in furtherance of a national policy or dumping duty not exceeding 25 per cent, and exercise such action as is deemed necessary for the protection thereof."

not exceeding 50%.

MR. KELLOCK: Yes.

THE COMMISSIONER: I presume its proper measure would be to bring the prices up to the proper price.

MR. KELLOCK: It hits, however, at somewhat the same thing as the last part of sub-section 9-(a).

THE COMMISSIONER: It does not prevent anybody having an interest in another country and Canada at the same time and being an exporter in one country and an importer there. It only says in that case would look to selling price and if the selling price is not what in the interest of the home industry would be a proper and fair one, then you may penalize him. Then I say to you: What interest have you beyond that? Whether an importer in China has an agency here or a branch of his business here. Are you going to stop all that? Are you going to say - nobody should do business in two countries?

MR. KELLOCK: I submit where consignment imports do not pay, that the selling price to begin with in Japan is going to be lower than it otherwise would be and ---

THE COMMISSIONER: Is not the Act now fully armed there with all sorts of teeth to see that does not take place?

MR. McRUER: A dumping duty is not a revenue duty anyway and they only apply it where necessary as such.

THE COMMISSIONER: To bring it up to certain

look to selling price and if the selling price is not what in the interest of the home industry would be a proper and fair one, then you may penalize him. Then I say to you; what interest have you beyond that whether an importer in China has an agency here or a branch of his business here. Are you going to say all that? Are you going to say - agency should be [illegible] [illegible]

MR. MEIGHEN: I submit where our interest imports [illegible] Japan is going to be lower than it otherwise would be and ---

[illegible] there with all sorts of teeth to see that does not [illegible]

[illegible]

selling price.

MR. McRUER: Yes.

MR. KELLOCK: My lord, the way that I had put it down is this: That the direct importer pays the invoice price, he pays the currency dumping duty, which he must add to that price, as well as his profit. Now, the consignment importer pays the invoice price only. He keeps the equivalent of a currency dump for his profit.

MR. McRUER: No.

THE COMMISSIONER: You say he pays invoice price only - you mean to the home exporter ?

MR. KELLOCK: Yes.

THE COMMISSIONER: But he does not pay his duty on that invoice price. He pays his duty on the value that is put before him by the Customs Officer, which may be a very different thing to his invoice price.

MR. KELLOCK: The currency dump ---

THE COMMISSIONER: I am leaving that aside. Anyhow he pays a duty which is not necessarily the price shown on the invoice.

MR. KELLOCK: I was leaving regular duty out of it altogether, because it must be paid in both cases.

MR. McRUER: There is no invoice on consignment.

THE COMMISSIONER: It should not be called an invoice on consignment. That is not an invoice. An invoice is a bill ~~wher~~ for somebody to pay.

selling price.

Q. [illegible]

MR. [illegible]: My lord, the way that I read the section is this: That the direct importer pays the invoice price, he pays the currency depreciation duty, which is added to that price, as well as his profit. Now, the consignment importer pays the invoice price only. He keeps the equivalent of a currency drop for his profit.

MR. MORDEN: No.

THE COMMISSIONER: You say he pays invoice price only - you mean to the home exporter ?

MR. MILLMAN: Yes.

THE COMMISSIONER: But he does not pay his duty on that invoice price. He pays his duty on the value that is put before him by the Customs Officer, which may be a very different thing to his invoice price.

MR. MILLMAN: The currency drop ---

THE COMMISSIONER: I am leaving that aside. Anyhow he pays a duty which is not necessarily the price shown on the invoice.

MR. [illegible]: I am [illegible] [illegible] but it is irrelevant, because it must be paid in both cases.

MR. MORDEN: There is no invoice on consignment.

THE COMMISSIONER: It should not be called an invoice on consignment. That is not an invoice. It is merely a bill made for somebody to pay.

MR. McRUER: They certify value, Mr. Hooper tells me.

MR. KELLOCK: Wait a moment. I have got the form. Here is"Form (N.A)" "Specimen Form of invoice approved by Canadian Customs for goods shipped on consignment." "Specimen form of invoice"---

THE COMMISSIONER: That is another case of taking words and giving them a fictitious meaning.

MR. KELLOCK: I appreciate your lordship's point, invoice contemplates legal sale.

THE COMMISSIONER: Yes. That is your bill, you pay that. Whereas if we are dealing with principal and agents there is no such thing. Then the Statutes have corrupted everything and the Departments are going the same and languge does not mean what it ought to mean. They call it an invoice.

MR. KELLOCK: They call it an invoice and they say "for goods shipped on consignment without sale by exporter." And then, "place and date" and then a line. Then "invoice of" and then a long line "consigned by," and then there is a table below for "country of origin." Then "Marks and numbers on packages." Then "quantities and description of goods." Then a double column, headed "Fair market value at times and place of shipment.(See Clause 6 of certificate of value hereon)" Then Clause 6 is:

"That the said invoice contains a just

Q. [illegible]: That merits value, Mr. [illegible] [illegible].

MR. [illegible]: Just a moment. I have got the form. Here inform (A.A.) "Specimen form of invoice a proved by Canadian Customs for goods shipped on consignment." "Specimen form of invoice"---

THE COMMISSIONER: That is another case of taking words and giving them a fictitious meaning.

Q. [illegible]: I appreciate your Commissioner's point. Invoice contemplates legal sale.

THE COMMISSIONER: Yes. That is your bill. You say that. Whereas it is one dealing with principal and agents there is no such thing. Then the [illegible] have corrupted everything and the Departments are going the same and language does not mean what it ought to mean. They call it an invoice.

MR. KELLOCK: They call it an invoice and they say "Not goods shipped on consignment without sale by vendor." Let them "place not sale" and then a line. Then "invoice of" and then a long line "consignment," the [illegible] [illegible] "factory of origin." Then "Marks and numbers on packages." Then "quantities and description of goods." Then a double column, head. "Fair market value at time and place of shipment, [illegible] & of [illegible] of value [illegible]. Then [illegible] & [illegible]

"Not the said invoice contains a [illegible]

and faithful valuation of such goods at their fair market value," etc.

Just the same as on the other.

Then, my lord, when one comes to enter these goods there is a form of entry B-1, amended 1930, and that has "Invoice value in currency of invoice, " and etc. and on the back there are, Form 1, and Form 2, and Form 2 is the "Oath or affirmation of the Consignee in Canada, or his agent or attorney, prescribed to be made in cases where the goods have been exported to Canada on consignment without sale by the exporter prior to shipment."

And the values of those are set in.

THE COMMISSIONER: You see, it is the oath or affirmation - what does it say?

MR. KELLOCK: The oath or affirmation is - well, it is a very long one.

THE COMMISSIONER: You cannot give me the gist of it?

MR. KELLOCK: Yes, I can.

MR. HOOPER: That there is no invoice and that the---

THE COMMISSIONER: It all gets back to market value.

MR. HOOPER: Yes, There is no other invoice, that the transaction is as set forth.

MR. KELLOCK: Is not lower than the actual cost of similar goods plus reasonable advance for selling cost and profits, etc. I think very much the same as on the back of the invoice itself. It also has certificate

and truthful valuation of such goods at least fair market value," etc.

Just the same as on the other.

Then, my lord, when one comes to enter these goods there is a form of entry E-1, numbered 1040, and that has "invoice value in currency of invoice," and etc. and on the back there are, form 1, and form 2, and form 2 is the "oath or affirmation of the consignee in Canada, or his agent or attorney, prescribed to be made in cases where the goods have been exported on Canada on consignment without sale by the exporter prior to shipment."

Are the values of those forms set in.

THE COMMISSIONER: You see, it is the oath or affirmation - what does it say?

MR. ROBINSON: The oath or affirmation is - well, it is a very long one.

THE COMMISSIONER: You cannot give me the gist of it?

MR. ROBINSON: Yes, I can.

MR. LOCKIN: That there is no invoice and that the--

THE COMMISSIONER: It all goes back to market value.

MR. ROBINSON: Yes. There is no other invoice.

That the information is as set forth.

MR. LOCKIN: Is not lower than the usual and customary wholesale price plus reasonable expense for packing and selling, etc. I think you may read the same on the

"That none of the said goods have been sold by or on behalf of the owner and importer....."

Well, the importer would be the owner.

"prior to their importation into Canada."

Of course, my lord, as soon as the importer sells then it becomes a sale and he is accountable and then one can speak of invoice price, because the property passes.

THE COMMISSIONER: That is another invoice.

MR. KELLOCK: That involves invoice price from his principal because the relationship then changes from principal and agent to vendor and purchaser and that involves,---

THE COMMISSIONER: It seems by all you have read to me that both the Act and the Regulations have all this thing quite in mind, checking up on consignment as well as on actual sales.

MR: KELLOCK: So far as the certificate is concerned,---

THE COMMISSIONER: The whole thing is all directed to getting to point of insuring competition only on fair market value. If it does that, that ends your interest in it, does not it? You are not interested in what the treasury collects from the importer?

MR. KELLOCK: Not primarily, no.

THE COMMISSIONER: Do you say that the way the thing works out to-day that fraud is being

"That some of the pale green hair been sold by me
on behalf of the owner and importer....."

Well, the importer would be the owner.

"Have to their immediately day remain."

Of course, my lord, as soon as the importer sells been
it imported only has to be properly and then one
can speak of invoice price, because the property
passes.

THE QUESTIONER: That is another invoice.

MR. KELLOGG: That involves invoice price from his
principal because the relationship then changes from
principal and agent to vendor and purchaser and that
involves,---

THE COMMISSIONER: It means by all you have read
to me that here the law and the regulations have all
this thing quite in mind, checking up on consignments
as well as on actual sales.

MR. KELLOGG: In fact the certificate is absolute
at,---

THE COMMISSIONER: The whole thing is not arbitrary
or setting up price or imposing conditions only on
fair market value. It's that that, that has
your security in it, that and the You are not
endeavoring to show the treasury departure from the
importer.

MR. KELLOGG: Not primarily, no.

THE COMMISSIONER: Do you say that the

perpetrated?

MR. KELLOCK: I say, my lord, it opens the door to that because my submission to your lordship is that if I am a consignment importer and I had in my hands a fund which is equal to the currency dumping duty, which I do not pay, then I can apply that in various ways.

THE COMMISSIONER: What do you mean by "Various ways"?

MR. KELLOCK: Well, I can divide that up.

THE COMMISSIONER: Suppose you do, as I say, divide it up a hundred times. Is that any worse than the Japanese merchant coming over himself with his goods? It gets back to that. Your interest is - are those goods being put on the Canadian market in a way that the fair market price is not being ensured and the consumer is able to buy them?

MR. KELLOCK: That is the point.

THE COMMISSIONER: Can you show that?

MR. KELLOCK: Not specifically. I can only say this to your lordship: that the evidence is that the Canadian government has no machinery in Japan for checking that.

THE COMMISSIONER: That applies all along the line. There is no machinery for checking anything.

MR. KELLOCK: There is machinery in other countries.

THE COMMISSIONER: I mean in Japan. You cannot shut out Japanese imports altogether.

MR. KELLOCK: All I am asking is - I submit it is

[illegible]

MR. MILLER: I say, my lord, it opens the door to that because my submission to your lordship is that if I am a complainant important and I get in my hands a fund which is equal to the currency dumping duty, which I do not pay, then I can supply that in various ways.

THE CHAIRMAN: What do you mean by various ways?

MR. MILLER: Well, I can divide that up.

THE CHAIRMAN: Suppose you do, as I say, divide it up a hundred times. Is that any worse than the Japanese movement coming over himself with his goods? It gets back to that. Your interest is - are these goods being put on the Canadian market in a way that the fair market price is not being ensured and the [illegible] is not being [illegible]?

MR. MILLER: That is the point.

THE CHAIRMAN: Can you show that?

MR. MILLER: Not specifically. I can only say this to your lordship: that the evidence in this the Canadian government has no machinery I argue for ensuring that.

THE CHAIRMAN: That applies all ways, the line. There is no machinery for checking anything.

MR. MILLER: There is machinery in other countries.

THE CHAIRMAN: I mean in Japan. You cannot shut out Japanese imports altogether.

an anomaly that imports should come in here on consignment and not pay the duty. If they pay the duty they are on the same basis as direct import. If they do not pay the duty then, in view of the fact that there is no machinery for supervising imports from Japan as to fair market value, my submission is that the fund in the hands of the importer will affect or may affect - I cannot put it any stronger than that - may affect the price at which the Japanese importer is willing to sell in the first place.

MR. McRUER: That applies to all other countries as well as Japan.

MR. KELLOCK: The case we are dealing with is a country where the currency is depreciated, and there are comparatively few of those countries.

THE COMMISSIONER: Well, as I say, the only thing to do would be to put in the Act that everybody must pay this particular currency dumping duty whether he buys or takes on consignment.

MR. KELLOCK: Yes, that is my only submission.

THE COMMISSIONER: That must have been purely before Parliament and the Government and the Department very thoroughly when they went to the trouble to put all these safeguards around.

MR. KELLOCK: Then what does sub-section 5 mean? I cannot reconcile the two.

MR. McRUER: 5 is the only one that provides for it.

THE COMMISSIONER: Since they are all there you

an assembly that imports should come in here on consignment and not pay the duty. If they do not pay the duty they are on the same basis as direct imports. If they do not pay the duty then, in view of the fact that there is no machinery for supervising imports from Japan so to fix market value, my submission is that the fund in the hands of the importer will effect or may effect - I cannot put it any stronger than that - may affect the price at which the Japanese importer is willing to sell in the first place.

Mr. MOORE: That applies to all other countries as well as Japan.

Mr. MILLOCK: The case we are dealing with is a country where the currency is depreciated, and there has been a substantially large depreciation.

The CHAIRMAN: Well, as I say, the only thing to do would be to put in the Act that everybody must pay this particular currency dumping duty whether to Japan or takes on consignment.

Mr. MILLOCK: Yes, that is my only submission.

THE CHAIRMAN: That must have been passed by before Parliament and the Government and the Senate were successfully when they went in for the tariff to cut all these subsidiaries out.

Mr. MILLOCK: That was the reason I mention it because presumably the one.

Mr. MOORE: I do not say that simplifies the

must take them all as having some value. 5, then in the light of 9 and everything else in that Act, I think must now be construed to mean that when the business of consignor and consignee is being used to evade 6 for no legitimate purpose but that, then the Minister may take such action as he deems necessary.

MR. KELLOCK: What kind of circumstance would that be?

MR. COMMISSIONER: I do not know.

MR. KELLOCK: Because the simple using of the process of selling onconsignment, which is merely selling on consignment, importing on consignment, obviates the necessity of paying currency dumping.

THE COMMISSIONER: If 5 stood alone that is what it would mean but you must take it now along with 9. 9 recognizes such a thing as consignment.

MR. KELLOCK: The only thing I am submitting, it is difficult to give any meaning to five.

THE COMMISSIONER: It may---

MR. HOOPER: Section 38 (2) gives the same meaning.

MR. KELLOCK: "In the case of goods shipped to Canada on consginment, but sold by the exporter to persons in Canada prior to their importation into Canada, the amount of the valuation for duty shall not be less than the invoice value to the Canadian purchaser, exclusive of all charges upon the goods, after shipment from the place whence exported directly into Canada."

must have them all as moving case v. Ins. 3, then in the light of 9 was everything else in that act, I think must now be construed to mean that when the business of conveyancer and conveyance is being used to evade 6 for no legitimate purpose but that, then the minister may take such action as he deems necessary.

MR. KELLOCK: What kind of circumstance would the

MR. ADLESON: Because the simple using of the

MR. KELLOCK: The only thing I am submitting, it is difficult to give any meaning to this.

MR. ADLESON: Section 29 (2) gives the same meaning.

MR. KELLOCK: "In the case of goods mortgaged to dealers on conditional, but sold by the mortgagor or persons to whom prior to their importation

shall not be less than the invoice value to the

one year) after delivered from the place

MR. McRUER: That is where they are sold prior to shipment, that is taking orders in advance.

THE COMMISSIONER: Yes, recognize, though, as consignment, and always gets back to protecting you by ensuring a certain value, and as long as that is done I do not see how you can complain.

MR. KELLOCK: 38 (2), just dealing with that, if the goods are sold prior to their importation into Canada then it ceases to be an importation on consignment, because---

THE COMMISSIONER: Is not the word "consignment" used? Read it again.

MR. KELLOCK: "In the case of goods shipped to Canada on consignment,"

That is, at the time they left.

"but sold by the exporter to persons in Canada prior to their importations into Canada,...."

THE COMMISSIONER: Before they get here?

MR. KELLOCK: Yes.

THE COMMISSIONER: Oh, yes, they may be consigned to somebody and while in transit sold to somebody else.

MR. KELLOCK: Then it ceases to be a consignment sale and by the time it gets here would be subject to currency dumping duty.

THE COMMISSIONER: Would be in the same position as just sold outright?

MR. MORLEY: That is were they are sold prior to shipment, that is taking orders in advance.

THE COMMISSIONER: Yes, I recognize, though, the consignment, and always gets back to protecting you by ensuring a certain value, and as long as that is done I do not see how you can complain.

MR. KELLOCK: So (2), just dealing with that, if the goods are sold prior to their importation into Canada then it ceases to be an importation on consignment, because---

THE COMMISSIONER: Is not the word "consignment" used? Read it again.

MR. KELLOCK: "In the case of goods shipped to Canada on consignment."

That is, at the time they left.

"but sold by the exporter to purchase in transit prior to their importation into Canada....."

MR. KELLOCK: Yes.

THE COMMISSIONER: Oh, yes, they may be consigned to somebody and while in transit sold to somebody else.

MR. KELLOCK: Then it ceases to be a consignment this and in the time it gets here would be subject to customs duties.

THE COMMISSIONER: Which is in the same position as just sold outright.

MR. KELLOCK: Yes.

THE COMMISSIONER: There, again, the consignment is not made illegal or invalid.

MR. KELLOCK: Quite so but in the certificate which one must take in entering the goods on consignment, the very last provision (12) is "That none of the said goods have been sold by or on behalf of the owner and importer prior to their importation into Canada." So that anything sold in Canada ---

THE COMMISSIONER: That is to distinguish between a sale and a consignment.

MR. KELLOCK: Yes, my lord. Well, the whole point, my lord, all I want to make with regard to it is that whatever the reason may have been the reason is not apparent.

THE COMMISSIONER: No, it is not apparent to me.

MR. KELLOCK: And I cannot imagine why in the one case there should be a duty and not in the other, because presumably the imposition of the duty is to bring up the depreciated currency to the place it ought to be before the regular duties are imposed., That must be the object of it, and why it applies in the one case and not in the other I do not know, and without being able to put my finger on whether that does ensure me, all I submit to your lordship is that if the consignment importer here has that money in his hands then I submit that where there is no machinery in Japan to check the certificates in any way, that that is a

MR. CALLAHAN: Yes.

THE COURT: Mr. Harris, again, the consignee is not made liable or invoiced.

MR. CALLAHAN: Quite so but in the case which one must take in entering the goods on pro-forma the very last provision (iii) is that none of the said goods have been sold by or on behalf of the owner and importer prior to their importation into Canada. So that anything said in Canada ---

THE CONSIGNEE: That is my disclaiming between a sale and a consignment.

MR. MELLOWS: Yes, my lord. Well, the whole point, my lord, all I want to make with regard to it is such whatever the reason may have been the reason is not [illegible].

THE CONSIGNEE: No, it is not appears to be.

MR. MELLOWS: And I cannot imagine why in the one case there was to be a duty and not in the other, because presumably the imposition of the duty is to bring up the depreciated currency to the place it ought to be before the regular duties are imposed. That must be the object of it, and why it applies in the one case and not in the other I do not know, and without being able to put my finger on whether that does change ---, all I submit to your lordship is that if the [illegible] money in his hands [illegible]

fund that may be used to reduce the price of the goods,

THE COMMISSIONER: I do not follow you there. I do not think it is any business of ours what fund is used in Japan to reduce the price of goods so long as when the goods are put on the market here they are put on at a price for your protection. Do you think any law should have as its object to discourage traders profits in one country having part of their business in another country? I don't think so.

MR. KELLOCK: I do not say that.

THE COMMISSIONER: That is apparently what you are striving for. There would be no object in a Japanese trader having an agent here, having a branch of his business here, if he had to pay all these fines, you may call them, to get his goods on the market. Therefore, so long as he can only put his goods on the market at the same price as the others who have not any agents here, I do not see that you have any complaints.

MR. KELLOCK: I just want to say this and I am finished - that is, if I were a Japanese exporter in Japan and I was exporting on consignment to someone in Canada, and I knew currency dumping duty had to be paid by him on my goods which he is going to have to pay me, say, 25 cents a yard and if I were unscrupulous and knew on the other hand that by shipping on consignment my agent was not going to have to pay that currency dumping duty but was going to have

that that may be used to reduce the price of the goods.

THE COMMISSIONER: I do not follow you there.

I do not think it is any business of ours what fund is used in Japan to reduce the price of goods so long as when the goods are put on the market here they are put on at a price for your protection. Do you think any law should have as its object to discourage traders profits in one country having part of their business in another country? I don't think so.

MR. KELLOCK: I do not say that.

THE COMMISSIONER: That is a generally that you are striving for. There would be no object in a Japanese trader having an agent here, having a branch of his business here, if he had to pay all these fines, you may call them, to get his goods on the market. Therefore, it does not be by one only pay the price on the market at the same price as the others who have not any Japanese here, I do not know what you have to complain of.

MR. KELLOCK: I just want to say this and I am finished - that is, if I were a Japanese merchant in Japan and I was selling on consignment to someone in Canada, and I were [illegible] to be paid by him on my goods which he is going to have to pay duty, say, so many and if I were under-[illegible] and have on the other hand when by shipping [illegible]

to charge a price which would put the price of that currency dumping duty into his hands, then I might be willing to sell to him at 23 cents in place of 25 cents and certify to it as the fair market value. All I am saying is that it opens the door to fraud.

THE COMMISSIONER: Surely does not open the door to fraud. High duties in themselves open the door to fraud.

MR. KELLOCK: My lord, I have an illustration here which goes over a page or two which I think your lordship will see is an illustration of that very thing.

> "It is admitted by Mr. Hooper that the Canadian Government has no machinery for checking what the Japanese fair market value on similar goods is at any time...."

THE COMMISSIONER: Well now, except that evidence that Mr. Hooper made it, that applies quite as much to cases of sales as consignments.

MR. KELLOCK: Yes.

THE COMMISSIONER: What is the use of complaining about it in respect to the one case and not in the other? What affect can it have in the one case more than in the other? Here is certificate to be given and sworn to and in both cases say what the fair Japanese market value is.

MR. KELLOCK: The volume of direct sales is going to be very small. The basis of comparison will disappear if the volume of direct sales disappear.

to change a price which would put the value of the
warranty beyond any legal dispute, then I might as
well try to sell to him at 22 cents in place of 15 cents
and justify to it as the fair market value. All I
am saying is that it opens the door to fraud.

The CHAIRMAN: Surely does not open the door to
fraud. High duties in themselves open the door to
fraud.

MR. FULLOW: My Lord, I have an illustration here
which goes over a page or two which I think your Lord-
ship will see is an illustration of just very things.

"It is admitted by Mr. Hooper that the Canadian
Government has no statutory power to say that
the Japanese fair market value on another goods
is at any time...."

[illegible] Lordship: What is the use of complaining
about it in respect to the one case and not in the
other? What effect can it have in the one case more
than in the other? There is certainly more to be given
and seems to me it was based on your Lordship's
Japanese market value is.

Mr. [illegible]: All values of these kind is going
to be very small. The trade of Japan has still

THE COMMISSIONER: What do you mean the "basis of comparison disappear"?

MR. KELLOCK: Well, if the price that the consignment importer must sell at is to be the same as the selling price of direct importer, if the direct imports disappear or dwindle then the basis of comparison between them and the prices at which the consignment importer is going to sell is going to disappear.

THE COMMISSIONER: Well, does not that mean, though, the price, the market value here? For instance, take the case of a sale - leave consignment out of the question - you tax the Canadian importer on the goods he imports from Japan enough to ensure that he cannot put those goods on the market excepting at a price.

MR. KELLOCK: You mean direct importer, my lord?

THE COMMISSIONER: Yes.

MR. KELLOCK: Yes.

THE COMMISSIONER: That is right, is not it?

MR. KELLOCK: Yes.

THE COMMISSIONER: Well, if that is the measure, that is the gauge, you are not getting away from that by bringing everything in on consignment, are you?

MR. KELLOCK: I think you are, my lord, if your measures of comparison disappear.

THE COMMISSIONER: No, I say the standard is that the goods, before they are put on the Canadian market at all, can only be put there at such a price as will not unfairly compete with you.

THE COMMISSIONER: Shall we go back to the question of [illegible]

Mr. Kellock: Well, if the price that the consignee importer must sell at is to be the same as the selling price of direct importer, if the direct importer disappears or vanishes then the basis of comparison between them and the price at which the consignment importer is going to sell is going to disappear.

THE COMMISSIONER: Well, suppose that [illegible] the price, the market value here? For instance, take the case of a sale - leave consignment out of the question - you tax the Canadian importer on the goods he imports from Japan enough to ensure that he cannot put those goods on the market competing at a price.

Mr. KELLOCK: You mean direct importer, by John? [illegible] Inc.

Mr. KELLOCK: Yes.

THE COMMISSIONER: That is right, is not it?

Mr. KELLOCK: Yes.

THE COMMISSIONER: Well, if that is the measure, that is the [illegible], you are not getting away from that by bringing everything in on consignment, are you?

Mr. KELLOCK: I guess you are, in that, if [illegible] of Imperial Measure.

THE COMMISSIONER: No, I say the standard is what the price, [illegible] are put on the Canadian market at all, you only be put there at such a price as will [illegible].

MR. KELLOCK: The way I would put it would be this.

THE COMMISSIONER: I thought all these proceedings of ascertaining the home market value and advance for cost and advance for profit was intended to see that the foreign article when put here on the market - to say to our consumer - is at least in no better position than yourself.

MR. KELLOCK: It is intended to do it.

THE COMMISSIONER: Does not it do it?

MR. KELLOCK: In this case when dealing only with currency dumping duty---

THE COMMISSIONER: You are talking of the other end altogether. I say when put on our market and being sold at such a price in dollars, what does it matter whether it has paid any duty, so long as it is not sold at any lesser price.

MR. KELLOCK: Yes, my lord, it does not matter.

THE COMMISSIONER: There is where your interest begins and ends.

MR. KELLOCK: All I am trying to submit, your lordship, is this: If all these things come in on consignment how can one say that the price at which the importer sells is at the price he would have sold if he had to---

THE COMMISSIONER: It is not the price that he would have sold, it is the price which I say is the same as yours, it is the proper price.

MR. KELLOCK: Your lordship does not mean

ROBT. BRYCE
COURTS - CANADA

MR. KELLOCK: The way I would put it would be that

THE COMMISSIONER: I thought all these proceedings of ascertaining the duties value and strong for cost and advance for profit was intended to use that the foreign article when put here on the market - to say to our consumer - is at least in no better position than yourself.

MR. KELLOCK: It is intended to do it.

THE COMMISSIONER: Does not it do it?

MR. KELLOCK: In this case when dealing only with matters dumping and---

THE COMMISSIONER: You are talking of the other and altogether. I say when put on our market and being sold at such a price in dollars, what does it matter whether it has paid any duty, so long as it is not sold at any lower price.

MR. KELLOCK: Yes, my lord, it does not matter.

THE COMMISSIONER: There is where your interest begins and ends.

MR. KELLOCK: All I am trying to submit, your lordship, is this: If all these things come in on consignment how can one say that the price at which the importer sells is at the price he would have sold if he had to---

THE COMMISSIONER: It is not the price that he sold for only, it is the price where I say is the fair price. It is the proper price.

MR. KELLOCK: Your lordship does not mean

the domestic price?

THE COMMISSIONER: You start off with the price of the country of manufacture and then add duty on top and valuation on top of valuation, and then comes excise and surtax. All this to ensure before it is put on the market here it will reach a figure which is not less than your figure for the same article. Now, is not that the object of protection?

MR. KELLOCK: Well, no, as I understand it.

THE COMMISSIONER: Well, if I am wrong on that ---

MR. HOOPER: That is right as far as consignment shipment.

MR. KELLOCK: Your lordship, this point, before duty put on ---

THE COMMISSIONER: I do not see the point "before duty put on?" I say before the article can be put on the Canadian market it can only be put there at a price which is in line with your price. Is not that all you can claim?

MR. KELLOCK: Yes, provided I am given the protection.

THE COMMISSIONER: That is your protection.

MR. KELLOCK: What your lordship means, in line with my price?

THE COMMISSIONER: I mean to say, to give you the preference over the foreign article.

MR. KELLOCK: If those things were brought in and duty was paid ---

the domestic price?

THE COMMISSIONER: You start off with the price of the country of manufacture and then add duty on top and valuation on top of valuation, and then comes excise and sales tax. All this to ensure before it is put on the market here it will reach a figure which is not less than your figure for the same article. Now, is not that the object of protection?

MR. MILLOCK: Well, no, as I understand it.

THE COMMISSIONER: Well, if I am wrong on that ---

MR. GOUGH: That is right as far as consignment shipment.

MR. MILLOCK: Then invariably, this price, values duty put on ---

THE COMMISSIONER: I do not see the point "before duty put on" I say before the article can be put on the Canadian market it can only be put there at a price which is in line with your price. Is not that all you can claim?

MR. MILLOCK: Yes, provided I am given the protection.

THE COMMISSIONER: That is your protection.

MR. MILLOCK: What your Lordship means, in line with my price?

THE COMMISSIONER: I mean to say, to give you the protection that the foreign article.

MR. MILLOCK: If those things were brought

THE COMMISSIONER: You say - tax them more so that you cannot bring them in at all.

MR. KELLOCK: No, I am not asking that.

THE COMMISSIONER: You are asking that the consignee be compelled to pay something that he is not paying now, although the Act says that if he is consignee he must put it on the market at the same value as if he bought it.

MR. KELLOCK: And if he did that I would not have any complaint.

THE COMMISSIONER: How do you know that he does not?

MR. KELLOCK: I cannot say. I submit that he very well may not, in view of this fund in his hands.

THE COMMISSIONER: How am I to decide that? You always get back to fund in his hands. How can a fund in his hands allow him to put something on the market at a less price than his competitor? There are two articles, there is selling price. Now, if those selling prices are not the same, if they are less in his case than in the other man's case, he must pay the extra duty. How do funds in his hands allow him to do anything? I do not understand it.

MR. KELLOCK: Well, my lord, in two ways: That if consignment imports take the place of direct imports, then you are not going to be able to compare the price that the consignment importer sells at with anybody

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else.

THE COMMISSIONER: You mean to say, that you call direct sales ---

MR. KELLOCK: They disappear.

THE COMMISSIONER: If they disappear altogether then you have nothing to compare them with. Have we arrived at that stage?

MR. KELLOCK: If it pays to bring the stuff in on consignment, yes. You can at least arrive at a stage where many of the articles you bring in on consignment, you cannot compare---

THE COMMISSIONER: You must take this for granted- nothing will come in unless it pays to bring them in.

MR. KELLOCK: If you cannot compare the prices, then my submission is it is going to have an effect on the price---

MR. HOOPER: That is not the way you check it. You check it by taking fairmarket value, you don't have to have actual invoice.

THE COMMISSIONER: We will have to take it up tomorrow morning.

-- The Commission adjourned at 5.05 P.M. to resume tomorrow morning at 10.30, Tuesday, February 23rd, 1937.

[illegible]

THE COMMISSIONER: You'd have to say, don't you, [illegible]

MR. [illegible]: Yes.

THE COMMISSIONER: [illegible] you have nothing to compare them with. Have we arrived at that stage?

MR. [illegible]: It is up to being the court in an [illegible], yes. You can at least arrive at a stage where many of the articles you bring in on some [illegible], you cannot conclude---

THE COMMISSIONER: You must come back for [illegible]

MR. [illegible]: If you [illegible], then my submission is it is going to have an effect on the [illegible]---

MR. [illegible]: That is not the way you [illegible] it.

THE COMMISSIONER: [illegible] to have a [illegible] involve.

THE COMMISSIONER: We will have to take it on tomorrow morning.

--- The Commission adjourned at [illegible] p.m. to [illegible] morning [illegible] 19[illegible], [illegible] 1987.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR? JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND SIXTEENTH DAY

(February 23rd, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company.
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J.H. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Labasso Cotton Co.

-- ooo --

APPEAL PROCEEDINGS ON CONTINUING EXAMINATION

THE. HON. MARVIN A.V.L. TEMPLE,

Commissioner.

A.W. GRIMSHAW, Secretary.

A P P E A R A N C E S:

T.C. Norbert, K.C. and K. Beauregard, K.C.	Immigration Counsel.
G.L. Fulton, K.C.	For Primary Textile Textiles.
C.C. Howard, K.C. Alex Lewytin, K.C. and C.V. Williamtyre.	For Dominion Textile Company.
A.W. Dixon, K.C.	For Courtaulds Limited.
W.A. Fraser, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.W. Hansman, K.C.	For Canadian Cotton.
Chas. Tupper, K.C. and F.W. Gabert.	For U.S. Rayon Co. Ltd.
Francis Lafoy, K.C.	For Dominion Cotton Co.

Ottawa, Ontario,
February 23, 1937.

-- The Commission resumed at 10.30 a.m.

ARGUMENT BY MR. KELLOCK (resumed)

MR. KELLOCK: I want to take just a moment, my lord, to illustrate, if I may, the point that we were discussing last evening, and that is this. Take the case of a Japanese exporter, my lord, who is contemplating exporting to Canada. He has a bill of goods for which he wants to get, and should get, we will say, 100 yen. The invoice value of that on the basis of the current exchange rate of 29 cents to the yen would be $29. Upon making inquiry he ascertains that if he sells that for importation into Canada he will have to pay a currency dumping duty which will be the difference between the rate of 35 cents and the current rate of 29 cents, or a difference of 6 cents per yen. That is $6 in the case of 100 yen. So the invoice value of that $29, with the currency dumping duty of $6, would make a total of $35, and he must sell the goods for at least that amount. I will leave out of consideration the ordinary duties because they will be applicable whether the shipment is on direct sale or on consignment, except that in the illustration as I follow it through, the ordinary duty will be less in the case of a consignment sale. I am also leaving out the

Mr. BENNETT: I want to take just a moment, my lord, to illustrate, if I may, the point that we were discussing last evening, and that is this. Take the case of a Japanese exporter, my lord, who is contemplating exporting to Canada. He has a bill for which he wants to get, and should get, we will say, 100 yen. The invoice value of that on the basis of the current exchange rate of 29 cents to the yen would be $29. Upon making inquiry he ascertains that if he sells that for importation into Canada he will have to pay a currency dumping duty which will be the difference between the rate of 25 cents and the current rate of 29 cents, or a difference of 6 cents per yen. That is 6% in the case of 100 yen. So the invoice value of that $29, with the currency dumping duty of 6%, would make a total of $35, and he must sell the goods for at least that amount. I will leave out of consideration the ordinary duties because they will be applicable whether the shipment is on direct sale or on consignment. Assuming that is the situation as I understand it therefore, the difficulty that will be there is the case of a [illegible]. I am then invited [illegible]

question of profit. So the price which the exporter from Japan must sell at would be at least $35; I will put it that way.

Having ascertained that, he decides to sell on consignment rather than to sell outright. He still wants to get 100 yen for his goods. I will take it for the moment that he invoices his goods at 83 yen instead of 100. Now 83 yen at 29 cents to the yen is $24.11. That would be the invoice value of the goods. Unless checked up there would be no currency dumping duty, but the currency dumping duty would be on that basis, $4.93; that is 6 cents per yen, and 83 yen makes it $4.93. The invoice value of $24.07 and the currency dumping duty, or rather an amount equal to the dumping duty of $4.93, would be $29. Now if he sells for $29 he gets his 100 yen which he started out to get.

Now we come to the question whether or not it is possible to say that instead of selling at $29 he ought to have sold at $35. How is that to be done? Take the evidence of Mr. Kehl, who was Fishers' man. They were in this business in a large way, and no doubt this firm followed the lead of other importers. Now his evidence was that the bulk of their business is on consignment. Now if the fair market value in Japan in the latter case is certified to as 83 yen, $24.07, there is no possibility from the Japanese end of saying that it ought to be anything else because the department has

question of profit. So the price which Mr. Carter from Jones must sell at would be at least $85; I will put it that way.

Having ascertained that, he decides to sell on consignment rather than to sell outright. He still wants to get 100 yen for his goods. I will take it for the moment that he invoices his goods at 85 yen instead of 100. Now 85 yen at 23 cents to the yen is $19.11. That would be the invoice value of the goods. Unless insured, so there would be no currency dumping duty, but the currency dumping duty would be on that basis, $4.93; that is 5 cents per yen, and 85 yen works it $4.93. The invoice value of $19.11 and the currency dumping duty, so added an amount equal to the dumping duty of $4.93, works to $23. Now if he sells for $25 he gets his 100 yen which he started out to get.

Now we come to the question whether or not it is possible to say that instead of selling at $25 he ought to have sold at $23. How is that to be done? Take the evidence of Mr. Wadi, who was Fisher's man. They were in this business in a large way, and in fact Mr. Wadi imported for Lord of other importers. Now his evidence was that the bulk of their business is on consignment. Now if the jury prefer to take Mr. Fisher's evidence in preference to my view, Mr. Wadi, there is no question, from the Department and of course that it would be quite right for the Department to

no machinery for that purpose.

THE COMMISSIONER: That puts it equal with a sale, of course.

MR. KELLOCK: Yes, my lord. I am going to cover that point in a moment.

Now from the Canadian end, how can it be checked? If the bulk of the business is done on consignment, unless one can find a direct sale at $35 the department will be absolutely without evidence upon which to base a finding that instead of selling at $29 it ought to be either $35 or anything else between $29 and $35. It is a question of evidence, and if there are no direct sales available, there is no evidence. There is a certificate that the fair market value in Japan is $29, and it gets down in the last analysis to the question of evidence available to the department when that shipment comes along to say ~~xxxxxx~~ that 83 yen is not the fair market value in Japan but that 100 yen is.

THE COMMISSIONER: What is that ?

MR. KELLOCK: It gets down to the question of evidence. When that shipment presents itself here on consignment, certified to at 83 yen, and it is subsequently sold in Canada at $29, if there is no direct sale of the same or similar sort of fabric with which to compare it, who is to say that the fair market value in Japan is not $29 but something else ? It is a question of evidence, and where the bulk of the imports are on consignment, that evidence is not

no machinery for that purpose.

[illegible] sale, of course.

MR. ALLOCK: Yes, my Lord. I am going to prove that point in a moment.

Now from the Canadian end, how can it be proved? If the bulk of the business is done on consignment, unless one can find a direct sale at $25 the department will be absolutely without evidence upon which to base a finding that instead of selling at $29 it ought to be either $25 or anything else between $20 and $25. It is a question of evidence, and if there are no direct sales available, there is no evidence. There is a certificate that the fair market value in Japan is $29, and it gets down in the last analysis to the question of evidence available to the department upon that element comes along to say whether that is not the fair market value in Japan but that 100 per ...

THE COMMISSIONER: What is that?

MR. ALLOCK: It gets down to the question of evidence. [illegible] consignment, certified to at $2 yen, and it is subsequently sold in Canada at $29, if there is no direct sale of the same or similar goods at Kobe [illegible] to compare it. Who is to say that the fair market value in Japan is not $20 but something else? It is a question of evidence, and where the bulk of the imports are on consignment, that evidence is not

forthcoming. It is just as your lordship points out. The situation from the standpoint of evidence is just the same whether the sale is a direct, outright sale or a shipment on consignment, but your lordship will see that there is an additional inducement in the case of consignment sales not to state the fair market value at 100 but to state it at 83. By stating it at 83 the exporter gets his 100 yen; but as this is something in the nature of the ordinary duty, because it is calculated on 83 yen instead of 100, his goods come in here at a lower price, and he can sell more of them in competition with the market here.

That is all I want to say, my lord. My submission is that that illustrates how and why the bulk of the business is on a consignment basis, why that is advantageous, and why it is being done, and what the advantage is.

MR. McRUER: Mr. Hooper says that there is very little business on consignment.

MR. KELLOCK: I do not know how he can say that. I have looked up the evidence again since last night, and Mr. Kehl's own words were --

MR. HOOPER: That is their own business he was speaking of.

MR. KELLOCK: I cannot address his lordship and two other people at once. Mr. Kehl's evidence is that the bulk of their business, to use his own words, is on consignment.

THE COMMISSIONER: Why is it not all on

[illegible]: Is it your judgment [illegible] the attention from the standpoint of evidence is just the same whether the sale is a direct, outright sale or a shipment on consignment, but your judgment will [illegible] is an additional inducement in the case of consignment sales not to state the fair market value at 100 but to state it at 98. By stating it at [illegible] you may be value is something in the nature of the ordinary duty. Because it is [illegible] at 100, but [illegible] more in line at a lower price, and he can sell more of them in competition with the market here.

That is all I want to say, my lord. My contention is that that illustrates how and why the work of the business is on a consignment basis, why that is extraordinary, and why it is being done, and what the consequence is.

[illegible] little business on consignment.

Mr. [illegible]: I do not know how he can say that. I have looked up the evidence again since last night.

[illegible]

[illegible] consulting of.

[illegible] people at once. Mr. [illegible]'s evidence is [illegible] or test business, to see the [illegible] is [illegible].

[illegible]

consignment ?

MR. KELLOCK: I do not know. That is as far as he would go.

THE COMMISSIONER: If you say this is an easy way of making money --

MR. KELLOCK: I would do it all on consignment.

THE COMMISSIONER: Then why don't they ?

MR. KELLOCK: I think perhaps they do.

THE COMMISSIONER: You said the bulk of his business was on consignment ?

MR. KELLOCK: That is his evidence. That is all I can say.

THE COMMISSIONER: Then why do they make any direct sales, if they can make this extra money by selling it altogether on consignment ?

MR. KELLOCK: I do not know.

THE COMMISSIONER: But does it not raise that question ? If it is as easy as you say to turn it into consignment sales, everybody would be doing it.

MR. KELLOCK: My submission is that that being so, they will, and the best I could get from Mr. Rehl was that the bulk of his business was on that basis. What I submit to your lordship is that if Fisher and Company, knowing the situation, do the bulk of their business on consignment, then a other importers in the business are doing it on the same basis.

THE COMMISSIONER: Before we go any further, can you give any explanation of this, Mr. Hooper ?

MR. HOOPER: Very few importers import on

consignment ?

Mr. [illegible]: I do not know. That is as far as

[illegible]

THE COMMISSIONER: If you say this is an easy way

of making money --

Mr. [illegible]: I would do it all on consignment.

THE COMMISSIONER: Then why don't you

Mr. [illegible]: I think persons they do.

THE COMMISSIONER: You said the bulk of his

business was on consignment ?

Mr. [illegible]: That is his evidence. That is

all I can say.

THE COMMISSIONER: Then why do they make any

direct sales, if they can make this extra money by

selling it altogether on consignment ?

Mr. [illegible]: I do not know.

THE COMMISSIONER: But does it not raise the

question ? If it is so easy as you say to turn it

into consignment sales, everybody would be doing it.

Mr. [illegible]: My conclusion is that when

so, they will. and the best I could get from Mr. [illegible]

was that the bulk of his business was on that basis.

that I submit to your Lordship, in that it Bishop and

Company, knowing the situation, do the bulk of their

business on consignment, then a other houses in

the business are doing it on the same basis.

THE COMMISSIONER: Before we get any further,

can you give any explanation of this, Mr. Brown ?

Mr. Brown: Very the important insert on

consignment goods coming from Japan.

THE COMMISSIONER: Why is this particular firm importing largely on consignment ? Can you give me any reason ?

MR. HOOPER: I would think it much to their advantage to import on consignment.

THE COMMISSIONER: Why ?

MR. HOOPER: They have the goods here in stock, and they can sell their stock. They do not have to pay dumping duty at the time of importation. They can wait until the goods are sold and then remit that amount to the exporter.

THE COMMISSIONER: They never pay dumping duty ?

MR. HOOPER: The time may never come when they pay dumping duty.

THE COMMISSIONER: It is not a question of the time never coming. It is not that it may never come but that it does never come, according to what Mr. Kellock says.

MR. HOOPER: I do not know that Mr. Kellock has the right to say that it never comes. We check it up, and it may come. We cannot tell until the goods are sold whether the dumping duty is applicable or not.

THE COMMISSIONER: I do not understand you.

MR. HOOPER: When the goods come in, the certificate of value is the value for duty purposes. Then the department may wait for a month or two months, or until the report comes in from, say, Fisher, to the collector as to the sale of these goods in Canada

consignment goods coming from Japan.

The COMMISSIONER: Why is this Petitioner like another firmly on consignment? Can you give us any reason?

Mr. MOPPER: I would think it was to their advantage to import on consignment.

The COMMISSIONER: Why?

Mr. MOPPER: They have the goods here in stock, and they can sell their stock. They do not have to pay dumping duty at the time of importation. They can wait until the goods are sold and then remit that amount to the exporter.

The COMMISSIONER: They never pay dumping duty?

Mr. MOPPER: The time may never come when they pay dumping duty.

The COMMISSIONER: It is not a question of the time never coming. It is not that it may never come but that it does never come, according to what Mr. Wallace says.

Mr. MOPPER: I do not know that Mr. Wallace has the right to say that it never comes. He sums it up, and it may come. He cannot tell until the goods are sold whether the dumping duty is applicable or not.

The COMMISSIONER: I do not understand you.

Mr. MOPPER: When the goods come in, the certificate of value is the value for duty purposes. Then the department may wait for a month or two months, or until the report comes in from Mr. Wallace, or

We check up and find out what he sold the goods in Canada at. We take the certified value and add an amount for quantity differential, as the goods were sold here in Canada in different quantities, and we find out the true home market value in Japan of these goods.

THE COMMISSIONER: How do you find out the true home market value in Japan ?

MR. HOOPER: All these agents in Canada, my lord, have price lists or prices furnished them from Japan showing the home market value of these goods, or the price at which Japanese are willing to sell them at in different quantities.

THE COMMISSIONER: Yes, go on.

MR. HOOPER: Then we find out the fair market value of the different sales, add the duty on that basis and the transportation and all the charges incurred in the shipment, and then we arrive at the value for special duty purposes; and if that value is higher than the selling price in Canada, the duty is collected as dumping duty. Or, to put it another way, if the selling price to Canada is below that value for special duty, then special duty is applicable.

MR. McRUER: Currency dumping duty ?

MR. HOOPER: We arrive at the value for special duty. We take the fair market value computed at the proclaimed rate, plus the duties, plus freight, plus all packing and duties on the packing, and arrive at a value for special duty. Then the duty when set out

We check up and find out what he paid the goods in Canada at. We take the certified value and add an amount for quantity differential, as the goods were sold here in Canada in different quantities, and we find out the true home market value in terms of Canadian money.

THE QUESTIONING: How do you find out the true home market value in Japan?

MR. HOOPER: All these cases in Canada, my lord, have price lists or prices furnished them from Japan showing the home market value of these goods, or the prices at which Japanese are willing to sell them at in different quantities.

THE QUESTIONING: Yes, go on.

MR. HOOPER: Then we find out the fair market value of the different sales, add the duty on that basis and the transportation and all the charges incurred in the shipment, and then we arrive at the value for special duty purposes; and if that value is higher than the selling price in Canada, the duty is collected as dumping duty. Or, to put it another way, if the selling price to Canada is below that value for special duty, then special duty is applicable.

MR. [illegible] Correct dumping duty?

MR. HOOPER: We arrive at the value for special duty. We take the fair market value computed at the prevailing rate, plus the duties, plus freight, plus all charges and duties on the packing, and arrive at a value for special duty. Then the duty [illegible]

is applicable.

THE COMMISSIONER: What proportion of Japanese importations are brought in on consignment ?

MR. HOOPER: I imagine there would not be ten per cent. I doubt very much whether it is five per cent.

MR. KELLOCK: Would it be possible to find out accurately ?

MR. HOOPER: No, it would not be possible, but you can make a rough estimate by looking at the invoices as they come through. In that way you have a fairly good knowledge of what goes on. You form your own opinion, but you cannot go through every invoice and check it up. I know it is a very difficult thing to get that concession from the Japanese exporter. He won't ship on consignment.

THE COMMISSIONER: He won't ship on consignment?

MR. HOOPER: No, sir.

THE COMMISSIONER: How does he ship if they are not shipped on consignment ?

MR. HOOPER: Not until he knows the man he is dealing with, and has worked with for years. In a great many cases people have tried to get since the first of the year shipments on consignment, but the exporters just won't do it.

THE COMMISSIONER: Do you know why ?

MR. HOOPER: They want to get their money. They generally ship on a straight cash basis.

MR. McRUER: They have to finance the whole

in appearance.

The CHAIRMAN: Does association of impressions [illegible] in an instrument?

Mr. MOORE: I imagine there would not be too far apart. I know very much whether it is five per cent.

Mr. CHAMBERS: Would it be possible to find out accurately?

Mr. MOORE: No, it would not be possible, but you can make a rough estimate by looking at the invoices as they come through. In what way you have a fairly good [illegible] of what goes. The time your own opinion, but you cannot go through every invoice and check it up. I know it is a very difficult thing to get that information from the [illegible] exporter. He won't help on consignment.

The CHAIRMAN: He won't help on [illegible]

Mr. MOORE: No, sir.

The CHAIRMAN: How does he help if they are not shipped on consignment?

Mr. MOORE: Not until he knows the man he is dealing with, and has worked with for years. If a great many house people have tried to get since the first of the year shipments on consignment, but the [illegible] instead of it.

[illegible]

Mr. [illegible] that man is just there [illegible] [illegible] [illegible]

[illegible]

transaction, my lord, from Japan, with people they do not know.

THE COMMISSIONER: When it is on consignment they have to wait ?

MR. HOOPER: They have to wait until the goods are sold before they get their money, and there have been some sad cases so far as the exporters are concerned with shipping on consignment. The people in Canada have sometimes disappeared or lost their money or used it for their own purposes. The exporters have to have only a few cases like that, and that cures them of shipping on consignment.

THE COMMISSIONER: So they want the cash in hand?

MR. HOOPER: Before the goods are delivered, and I suppose if they did reach an agreement to ship on consignment they might want maybe a cash deposit in Japan to guarantee the account.

THE COMMISSIONER: Well, Mr. Kellock, we have not any concrete case before us to decide. All I can do is this. You are calling to my attention what looks to you like a loophole, and I will take a note of it.

MR. McRUER: What is Mr. Kellock's suggestion ?

THE COMMISSIONER: That dumping duty be collected in every case, whether consignment or sale.

MR. KELLOCK: I see no reason for the distinction myself.

THE COMMISSIONER: We had better leave it at that.

MR. KELLOCK: Very well, my lord. Now here is an illustration, my lord, which I mentioned yesterday.

transaction, my lord, from Japan, with people they do not know.

THE COMMISSIONER: Does it in the consignment case have to work?

Mr. Boulard: They have to wait until the goods are sold before they get their money, and there have been cases and cases so far as the exporters are concerned with shipping on consignment. The people in Canada have sometimes disappeared or lost their money or used it for their own purposes. The exporters have to have only a few cases like that, and that cures them of shipping on consignment.

THE COMMISSIONER: So they want the cash in advance.

Mr. Barron: Before the goods are delivered, and (varying) if they do sell on consignment they might want only a cash deposit in Japan to guarantee the account.

THE COMMISSIONER: Well, Mr. Kilbom, we have not [illegible] in Italian. All I can do is this. You are talking to my attention what looks to you like a loophole, and I will take a note of it.

Mr. Barron: Not in the Japanese [illegible]

THE COMMISSIONER: That dumping data be collected in every case, whether consignment or sale.

Mr. [illegible]: I had it [illegible] the [illegible] years.

THE COMMISSIONER: We had better leave it as that.

Mr. Kilbom: Very well, my lord. That ends it.

It is a little different.

THE COMMISSIONER: Are you on the same point ?

MR. KELLOCK: Yes, along the line of consignment shipments. I have a letter here, my lord.

THE COMMISSIONER: Just a minute. I do not know that I should take up any more time with this. I understand your objection and what you think to be a flaw in the act or regulations. I am not going to go any farther into it just now unless you can show me that Mr. Berry is modifying his statements in some respect. You have Mr. Berry there and Mr. Hallam. Can they tell me of any concrete importations on consignment, and of any frauds going on ? If they can, do it right now. It is no use sitting down and imagining possible cases that might arise.

MR. KELLOCK: I am quite satisfied with the way your lordship has left it. Now here is an additional flaw that I am coming to.

THE COMMISSIONER: An additional flaw on another point ?

MR. KELLOCK: In connection with consignment shipments.

THE COMMISSIONER: What is it ?

MR. KELLOCK: The letter speaks for itself. It is a letter from Mr. Lewis, who is manager of Slingsby Silks Limited, of Brantford, Ontario. He says:

"We are enclosing sample of a Japanese all spun silk fabric purchased at the store of J. H. Young & Company, Brantford, who are selling

It is a little different.

[illegible]: Are you on the same point?

Mr. [illegible]: Yes, some one line of co-ordinate [illegible] suggested. I have a letter here, my lord.

The [illegible]: Just a minute. I do not know that I should have an any more time with [illegible]. I understand your objection and what you think is a flaw in the act or regulations. I am not going to go further into it just now unless you can make me want to. Berry is modifying his statements in a [illegible] report. You have Mr. Berry to be cross-examined. Will we get any [illegible] on ? If they will do it right now. It is no use sitting down and [illegible] possible cross-examination.

Mr. [illegible]: I am [illegible] my learned friend has left it. Now here is an additional view that I am coming to.

The [illegible]: An additional line on [illegible] point ?

Mr. [illegible]: It [illegible] [illegible]

The [illegible]: What is it ?

Mr. [illegible]: The letter asks for [illegible]. It is a letter from Mr. [illegible], who is manager of [illegible] [illegible], of [illegible].

"We are [illegible] [illegible] of a [illegible]

this fabric in various colors at 29 cents per yard."

THE COMMISSIONER: And a sample is attached ?

MR. KELLOCK: Yes. The letter goes on:

"On enquiry, the writer learned that Young purchased the goods from A. B. Fisher Company, Toronto, at 25 cents per yard. We were further told that Fisher sold a considerable amount of this material last spring and summer but at a considerably higher price,--"

If I might just pause there, I should like to refer to Exhibit 1197, which is an exhibit furnished by Mr. Fisher. I find on page 3 of the exhibit that the price of this cloth, in a different shade, is said to be 42½ cents, and that is selling now at 25 cents. I continue the letter:

"We were further told that Fisher sold a considerable amount of this material last spring and summer but at a considerably higher price but that Fisher states that as the goods have been in the country over a year they are able to sell them at any price they desire without the levy of additional dumping duty. In this way, they explain, it is possible to sell the goods this season at 25 cents per yard. It was also stated that the goods were shipped to Fisher on consignment, the bulk of them being held in bond at the customs and being cleared in small lots as sold."

this fabric is various colors at 49 cents per yard."

THE [illegible]: And a report is [illegible]?

Mr. [illegible]: Yes. The letter goes on:

"We really [illegible] learned that [illegible] purchased the goods from A. [illegible] Company, Toronto, at 45 cents per yard. We were further told that Fisher sold a considerable amount of this material last spring and summer but at a considerably higher price,—"

If I might just pause there, I should like to refer to Exhibit 1187, which is an exhibit introduced by Mr. Fisher. I find on page 2 of the exhibit that the price of this cloth, in a different shade, is said to be 44½ cents, and that is selling now at [illegible]. I [illegible] Fisher:

"We were further told that Fisher sold a considerable amount of this material last spring and summer but at a considerably higher price but that Spyer states that as the goods have been in the country over a year they are able to sell them at any price they choose without the levy of additional duties duty. In this way, they explain, it is [illegible] to sell the goods this season at 25 cents per yard. It was also stated that the goods were shipped to Fisher on consignment, thereby [illegible] [illegible] at the machine and [illegible] [illegible] [illegible] well."

THE COMMISSIONER: That is, they are sold before they are taken out of warehouse.

MR. KELLOCK: The letter goes on:

"The writer cannot understand how this fabric can be made in Japan, shipped to Canada duty paid and sold to retailer at 25 cents per yard. In his opinion the cost of the goods manufactured in Canada will be at least several times that figure.

We think this case merits investigation and we would appreciate the Association taking the necessary steps to have it investigated."

THE COMMISSIONER: That is a proper letter to send on to the customs authorities, is it not ?

MR. KELLOCK: I think it is, my lord. There are two points I would make. I cannot find any basis in any of the statutes for the idea that goods that have been held over a year can be sold at any price they like.

THE COMMISSIONER: But you must not take everything a letter says. That is a letter, and you have read it.

MR. McRUER: Mr. Hooper says that there is nothing in the law --

MR. KELLOCK: There is another point, my lord. According to this letter they sell in small lots before they take the goods out of the warehouse. Now under section 86 of the Customs Act --

THE COMMISSIONER: By sell you mean they have an agreement to sell ?

THE COMMISSIONER: That is, they are sold before they are taken out of warehouse.

MR. ROBSON: The letter goes on:

"The writer cannot understand how this trade can be made in Japan, shipped to Canada duty paid and sold to retailer at 65 cents per yard. In his opinion the cost of the goods manufactured in Canada will be at least several times that figure.

We think this case worth investigation and we would appreciate the Commission taking the necessary steps to have it investigated."

THE COMMISSIONER: That is a proper letter to send on to the customs authorities, is it not?

MR. ROBSON: I think it is, my lord. There are two points I would mean. I cannot find any in any of the statutes for the idea that goods that have been held over a year can be sold at any price they like.

THE COMMISSIONER: But you must not take everything a letter says. That is a letter, and you have read it.

MR. MACLEAN: Mr. Hooper says that there is nothing in the law --

MR. ROBSON: There is another point, my lord. According to this letter they sell in small lots before they take the goods out of the warehouse. Are some duties of the Customs Act --

THE COMMISSIONER: My soul you mean they

MR. KELLOCK: Yes.

THE COMMISSIONER: When you have goods in bond that is what you do. You do not take them out of bond until you have a purchaser.

MR. KELLOCK: The point I am coming to is this, my lord. The point about bringing in goods on consignment is this: There is no currency dump.

THE COMMISSIONER: I know your point.

MR. KELLOCK: Well then, if they sell them before they take them out of warehouse it ceases to be a consignment shipment, and section 86 of the Customs Act says:

> "All goods taken out of warehouse shall be subject to the duties to which they would be subject if then imported into Canada, and not to any other."

THE COMMISSIONER: Imported into Canada? Importations may be either by sale or on consignment.

MR. KELLOCK: Yes, but if it is a direct sale before importation, the currency dumping duty applies, and section 86 says:

> "All goods taken out of warehouse shall be subject --"

to the duty that they would pay at that moment. So my point is that it ceases to be a consignment shipment before it gets out of warehouse, and it ought to bear the currency dumping duty.

THE COMMISSIONER: If that construction is right then they should all bear the currency dumping duty.

Mr. Aylesworth: Yes.

The Commissioner: Where you have goods in bond that is what you do. You do not take them out of bond until you have a purchaser.

Mr. Aylesworth: The point I am coming to is this, my Lord. The point about bringing in goods on consignment is this: There is no warehouse step.

The Commissioner: I know your point.

Mr. Aylesworth: Well then, if they sell them before they take them out of warehouse it seems to me a consignment shipment, and section 86 of the customs act says:

"All goods taken out of warehouse shall be subject to the duties to which they would be subject if then imported into Canada, and not to any other."

The Commissioner: Imported into Canada? Importations may be either by sale or on consignment.

Mr. Aylesworth: Yes, but if it is a direct sale before importation, the original duties only apply, and section 86 says:

"All goods taken out of warehouse shall be subject --"

to the duty that they would pay at that moment. My point is that it seems to be a consignment shipment if goes out of warehouse, and it ought to bear the duties Canadian duty.

Mr. Aylesworth: If that proposition is right then we will all be in an entirely Canadian duty-

MR. KELLOCK: Only if they are kept in warehouse.

THE COMMISSIONER: If they go on consignment they are kept in warehouse.

MR. KELLOCK: But not necessarily in bonded warehouse. They could be cleared and taken into Fisher's own warehouse.

THE COMMISSIONER: When they go out of warehouse they have to be dealt with as if imported. One is on consignment, the other is on sale. One pays dumping duty, the other does not. How does that get you any further ?

MR. KELLOCK: Only this, my lord. If the goods have been sold before taken out of warehouse, it ceases to be a consignment sale, and the statute says --

THE COMMISSIONER: You are talking about a consignment sale. Perhaps we are wasting a lot of time but as I understand it there is consignment, and there is sale. They are two different things, but they are both means whereby goods from Japan come into Canada. Some come in by sale.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Others come in on consignment. That is, there is no sale.

MR. KELLOCK: Quite so.

THE COMMISSIONER: They are sent in by the exporter to the consignee who will sell them later on.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: In both cases there is a physical importation of goods from Japan into Canada.

MR. MILLIKEN: Only if they are kept in warehouse.

THE COMMISSIONER: If they are on consignment they are kept in warehouse.

MR. KELLOGG: But not necessarily in bonded warehouse. They could be cleared and taken into their own warehouse.

THE COMMISSIONER: Then they are not consignment, they have to be dealt with as if imported. One is on consignment, the other is on sale. One pays duties duty, the other does not. How does that get you any further?

MR. KELLOGG: Only that, my lord. If the goods have been sold before taken out of warehouse, it seems to be a consignment sale, and the statute says -

THE COMMISSIONER: You are talking about a consignment sale. Perhaps we are wasting a lot of time but as I understand it there is consignment, and there is sale. They are two different things, but they are both means whereby goods from Japan come into Canada. Some come in by sale.

MR. KELLOGG: Yes, my lord.

THE COMMISSIONER: Others come in on consignment. That is, there is no sale.

MR. KELLOGG: Quite so.

THE COMMISSIONER: They are sent in by the exporter to the consignee and will then take their chance.

MR. MILLIKEN: Yes, my lord.

THE COMMISSIONER: It will cause some is a material consideration of fact. Some cases there are.

MR. KELLOCK: Yes.

THE COMMISSIONER: But they only pay dumping duty in the first case, where they come in by reason of sale made and money paid over in Japan. In the second case they do not. They come here without that, and the consignee sells them, but he does not pay the dumping duty unless he sells them at a price which is lower than the fair market value. Now what is the use of reading that to me ? That does not throw any light on it.

MR. KELLOCK: My point is this, my lord. If the goods are sold before they are taken out of the warehouse, then the consignment feature of it is at an end. It then is a sale, and section 86 applies.

THE COMMISSIONER: Do you interpret the word "consignment" as meaning goods that are consigned here never to be sold ?

MR. KELLOCK: No, but when a sale has been made by the consignee --

THE COMMISSIONER: The act provides that when a sale is made, if the sale is made at less than the fair market value he pays dumping duty, and if it is not he does not. That is provided for.

MR. KELLOCK: But goods in bond, my lord --

THE COMMISSIONER: I do not think there is any use in taking up any more time about it. All I can do is look at the general situation which you are afraid of.

MR. KELLOCK: Very well, my lord.

Mr. Williams: Yes.

The COMMISSIONER: But they only pay dumping duty in the first case, where they come in by reason of sale made and money paid over in Japan. In the second case they do not. They come here without that, and the consignee sells them, but he does not pay the dumping duty, unless he sells them at a price which is lower than the fair market value. How that is the case of leaving that to me? That does not throw any light on it.

Mr. Ellis: My point is this, my lord. If the goods are sold before they are taken out of the warehouse, then the consignment language of it is not so good. It turns in a sale, and section 56 applies.

The COMMISSIONER: Do you interpret the word "consignment" as meaning goods that are consigned here never to be sold?

Mr. Ellis: No, but where a sale has been made by the consignee --

The COMMISSIONER: Has not provision been made where sale is made, if the sale is made at less than a fair market value he pays dumping duty, and if it is not he does not. That is provided for.

Mr. Ellis: But goods in bond, my lord --

The COMMISSIONER: I do not think there is any use in trying up any more time about it. All I can do is look at the general situation, you are afraid of.

Mr. Ellis: Very well, my lord.

THE COMMISSIONER: So far as the matter is a practical one, I have heard Mr. Berry's evidence of the actual practice with respect to the consignment business, and if you have any evidence to the contrary you have two experts sitting beside you now, and I want to hear it now. Mr. Hooper tells me that there is very little business on consignment.

MR. KELLOCK: I do not know that either Major Hallam or Mr. Berry can give your lordship any evidence as to the proportion of consignment sales. All I can point out is that in addition to Mr. Hooper's evidence we have the evidence of Mr. Kehl.

THE COMMISSIONER: He was talking for his own firm.

MR. KELLOCK: Yes, and all I can argue from that is that other firms do the same thing.

Now referring to page 7 of section G of my brief, I quote:

> "It is submitted that the quantities of goods imported into Canada from Japan in 1936 are substantial and alarming. There are at least two reasons why the volume is not actually greater. One reason is that it takes time to develop new channels of trade and to build up suitable stocks. For example, a buyer testified that he had seen some 'very interesting numbers' in Japanese rayons last spring (6868 l.10-l.15) but that one of the reasons he had not bought any then was because

The consideration so far as the matter is a practical one, I have heard Mr. Berry's evidence of the actual practice with respect to the consignment business, and if you have any evidence to the contrary you have two experts giving opinion evidence, and I want to hear it now. Mr. Hooper tells us that there is very little business on consignment.

Mr. A. ROBB: I do not know that either Mr. Hallam or Mr. Berry can give your lordship any evidence as to the proportion of consignment sales. All I can point out is that in addition to Mr. Hooper's evidence we have the evidence of Mr. Hall.

The COMMISSIONER: He was testing for his own firm.

Mr. A. ROBB: Yes, and all I can state from that is that other firms do the same thing.

Now referring to page 7 of section 6 of my brief, I quote:

"It is submitted that the quantities of goods imported into Canada from Japan in 1936 are substantial and alarming. There are at least two reasons why the volume is not seriously greater. The reason is that it takes time to develop new channels of trade and to build up reliable markets. The complaint, a buyer testified that he had been some 'very interesting months' in importing trying just getting (see lib-1,2) but just one of the reasons he had put forward was because

'it was a little late for the class of goods I was being shown' for that season. This is borne out by Fairchild's evidence that his novelty samples were received too late for last season. Another reason is to be found in the evidence of P. R. Watson and W. M. Berry. Mr. Watson stated at page 6958 l.6 to 6960 l.14 that so far as Mitsubishi Company are concerned their general manager in New York had admitted to him that during the sittings of this Commission they were not pushing sales in Canada. Exhibits 403, 404 and 405 were put in by Mr. Berry. From the first-named, Exhibit 403, it appears that the Japanese government was warning Japanese traders not to sell 'at ridiculously low prices' for fear of reimposition by Canada of anti-dumping duties. Exhibit 404 indicates the same thing, while Exhibit 405 shows that the Japanese Boyon Association was attempting to stabilize exports."

THE COMMISSIONER: Will you please let me know what Exhibit 403 is. Is it a letter ?

MR. KELLOCK: It is a newspaper article, my lord.

THE COMMISSIONER: You say that the Japanese government was warning Japanese traders not to sell.

MR. KELLOCK: Yes, my lord.

MR. McPUM: There is nothing about Canada in that at all.

THE COMMISSIONER: What is Exhibit 403 ?

'It was a little late for the close of goods I was going down' for that season. This is borne out by Polanski's evidence that his overall sales were received too late for that season. Another reason is to be found in the evidence of K. Katsuo and K. Sato, that so far as Mitsubishi Company are concerned their general manager in New York had admitted to him that during the sittings of this commission they were not pushing sales in Canada. Exhibits 406, 404 and 405 were put in by Mr. Berry. From the first-named, exhibit 406, it appears that the Japanese government was urging Japanese traders not to sell 'at ridiculously low prices' for fear of retaliation by Canada of anti-dumping duties. Exhibit 404 indicates the same thing, while exhibit 405 shows that the Japanese Association was attempting to stabilize prices.

THE COMMISSIONER: Will you please let me know what exhibit 405 is. Is it a letter?

Mr. HUDSON: It is a newspaper article, my lord.

THE COMMISSIONER: You say that the Japanese government was warning Japanese traders not to sell.

Mr. HUDSON: Yes, my lord.

Mr. WALLACE: There is nothing about Canada in that at all.

THE COMMISSIONER: What is Exhibit 404?

MR. KELLOCK: It is a newspaper article in the Manchester Guardian of April 3, 1936, headed "Rayons at less than 2½d. a yard. Canadian reprisals ?" and reads:

"Japanese papers state that the Japanese Foreign Office has received information from Canada that anti-dumping duties are likely to be again imposed on Japanese rayon goods, and that the new rate will be based on the highest price of 1934. Canada is said to think it unreasonable that Japanese rayon cloth should be imported at only 17 sen a yard (2.38d.), when the highest rate in 1934 was 30 sen (4.2d.). Prices lower than that will cause an outcry from the Canadian rayon industry. The Foreign Office and the cloth exporters think that such a measure would be 'unreasonable' as Japan has been booking heavy orders since the restoration of trade relations on January 1. But the government is warning Japanese traders 'not to sell at recklessly low prices.'"

Mr. McRUER: Where did the information come from ?

MR. KELLOCK: I go on to say in paragraph 18, page 8, section G of my brief:

"It is interesting to notice that while, according to the evidence of Mr. Hooper, the United States duties against importation of Japanese rayons are somewhat lower than the

Mr. ROBLIN: It is a newspaper article in the [illegible] of [illegible], [illegible] "Japan at less than 2½d. a yrd.Sarawlan repriesals ?" and reads:

"Japanese reports state that the Japanese foreign office has received information from Canada that anti-dumping duties are likely to be made [illegible], and that the new rate will be based on the lowest price of 1924. Canada is said to think it unreasonable that Japanese cotton cloth should be imported at [illegible] (4.97.). When the highest rate in 1924 was 20 sen (4.86.). Prices lower than that will cause an outcry from the Canadian cotton industry. The foreign office and the cloth exporters think that such a measure would be 'unreasonable' as Japan has been booking heavy orders since the resumption of trade relations on January 1. But the government is warning Japanese traders 'not to sell at recklessly low prices.'"

Mr. ROBLIN: Sir, did the information come from ?

Mr. [illegible] [illegible] in [illegible] (1), page 6, section 3 of my brief:

"It is interesting to notice that while, according to Mr. [illegible] in the Commons, the United States duties against importation of Japanese cotton are somewhat lower than the

"existing Canadian duties, nevertheless according to exhibit 889, filed by Mr. Hooper, the imports of rayon and misture fabrics into the United States, (January to July (inclusive) 1936, were 118,461 pounds. Exhibit 655 shows that the corresponding figure in the case of Canada was 128,581 pounds. This figure is, of course, higher absolutely than the United States figure. Comparing the size of the Canadian market with the size of the United States market, the Canadian figure is relatively very much larger. Mr. Hooper was cross-examined as to the reason for this situation in view of his evidence that the United States duties against Japanese importations of rayon fabrics are lower than the Canadian duties."

And the evidence is referred to. The brief goes on:

"Mr. Hooper suggested that Canadian imports from Japan were mainly cheap taffetas and that there was no market in the United States for these goods. This is contradicted by the evidence of Mr. Doner, who had several years' experience with Sears-Roebuck & Company, who testified that these goods had a market there. Mr. Hooper himself at page 1786 l.15 to 1787 l.1 testified that these goods were being imported both into the United States

"While Canadian dollar percentages according to Exhibit 886, filed by Mr. Hooper, the imports of rayon and mixture fabrics into the United States, (January to July inclusive) 1936, were 116,461 pounds. Exhibit 886 shows that the corresponding figure in the case of Canada was 180,891 pounds. This figure is, of course, higher absolutely than the United States figure. Comparing the size of the Canadian market with the size of the United States market, the Canadian figure is relatively very much larger. Mr. Hooper was cross-examined as to the reason for this situation in view of his evidence that the United States duties against Japanese importations of rayon fabrics are lower than the Canadian duties."

And the evidence is stated referred to. The [illegible]

"Mr. Hooper suggested that Canadian imports from Japan were mainly cheap taffetas and that there was no market in the United States for these goods. This is contradicted by the evidence of Mr. Hooper, who had secured [illegible], who testified that these goods had a market [illegible]. Mr. Hooper himself at page 1786 l.15 to 1787 l.1 testified that [illegible]

and Canada. In any case the evidence now before the Commission (Exhibits 1197, 523, 880 and 887(is that importations into Canada are by no means restricted to these cheap taffeta fabrics but are expanding in both quality and varieties of colour and pattern.

Mr. Hooper had seen some Canadian mill costs on fabrics corresponding to cheap Japanese taffetas, plain and brocaded which, in his opinion, were not accurate, which led him to believe that possibly the Canadian mills were demanding too high a price."

That is surmise, I submit:

"On the contrary, Mr. Howson in his evidence said that he was unable to criticize a single cost put forward by any Canadian mill."

THE COMMISSIONER: That statement of yours has been challenged, as to Mr. Howson's evidence.

MR. KELLOCK: Would your lordship like me to read it ?

MR. McRUER: The evidence of Mr. Howson on the page cited is different altogether. Mr. Howson did challenge the costs all the way through at different times.

THE COMMISSIONER: We had better turn up the evidence.

MR. KELLOCK: At page 12949 of the evidence, line 20, Mr. Howson was giving evidence, as follows:

and Lemoyne. In my opinion the evidence now before the commission (Exhibits 1197, 364, 366 and 367) is that imports came into Lemoyne in no more proportion to those going into other parts but are amounting in both quality and varieties of colour and pattern.

Mr. Hanson: Mr. Commissioner will agree on behalf of counsel in short lengths inferior, plain and bordered skins, in my opinion, were not exports, which led him to believe that some of the Canadian mills were dumping too high a price.

That is nonsense, I submit.

On the contrary, Mr. Hanson in his argument said that he was making a criticism a direct one put forward by any Canadian mill.

MR. COMMISSIONER: That statement of yours has been challenged, as to Mr. Lemoyne's evidence.

Mr. HANSON: Would you rather I read it?

Mr. MILLER: The evidence of Mr. Lemoyne on the page cited is different altogether. Mr. Hanson has challenged the counsel all the way through at different times.

Mr. COMMISSIONER: We had better turn up this.

(Pause).

Mr. [illegible] is page 1214 of the transcript, line 20, Mr. Hanson was giving argument, as follows:

"Q. Now, are you suggesting then in the case of any company that we are dealing with here that their standard cost which they have used to show the costs of any particular fabric which has been put in here as an exhibit, is so far away from actual, if actual cost of that fabric could be ascertained, that it should not be relied on ? A. I have been unable to make any calculation at all to check those individual costs with the actual costs of the company or any company which has provided the samples.

Q. Well then, an actual cost does not exist at any one time for any one fabric, does it ? It only exists in theory because you cannot find it ? A. Yes, that is quite true

Q. Now, in the case of the Penman Company where you set out the table in Exhibit 969 between the standard costs which the company set up and the actual costs, I notice that there are only two years where the standard costs appear to have been higher than the actual and that is in the years 1932 and 1933, is that right ? A. Yes.

Q. And in the last two years, 1934 and 1935, particularly 1935, while the standard costs appear to have been lower than the actual, the difference was very small ? A. $21,000.

Q. And if you started to trace that back

Now, are you suggesting that in the case of any company that we are dealing with here that there actually was selling that has been used to show the value of any particular traffic which has been put in here as an exhibit, is so far away from actual, if actual cost of that traffic could be ascertained, that it should not be relied on? A. I have been unable make any calculation at all to check those individual cases with the actual costs of the company or any company which has provided the material.

Q. Well then, an actual cost does not exist at any one time for any one traffic, does it? It only exists in theory because you cannot find it? A. Yes, that is quite t

Q. Now, in the case of the Pennsylvania where you put out the table in Exhibit 020 be the annual cost as in the Pennsylvania case or and the annual cost, I notice that there are only two years where the expected value happen to have been higher than the actual and that is in the years 1912 and 1913, is that right? A. Yes.

Q. And in the last two years, 1914 and 1915, respectively 1913, which are actual figures assumed to be less than the actual. Is that right? A. Yes, that is.

Q. And if you worked at those two

into particular line fabricated by the Penman Company you would get either no difference or an inconsequential difference ? A. Well, while in the table it is small, the variations under different classifications are quite extensive. For instance, in that particular year the gain on the price of material -- there was a loss on the price of material of $236,534.

Q. You mean that the standard costs of the material were too low ? A. There was gain of burden of $161,246. Gain of inventory of $36,272 and gain on labour of $8,391."

THE COMMISSIONER: What is meant by "gain"? The Actual cost being less than the standard cost ?

MR. KELLOCK: Yes, it would be.

MR. McRUER: It is less in some cases.

THE COMMISSIONER: It speaks of gains, and I just wanted to make sure of what was meant.

MR. KELLOCK: The evidence goes on at page 12951:

"Q. I know but we are looking at the final result and the final result I say, when you trace it back to individual product, would either be very small or make no difference at all ? A. It would in that year."

MR. McRUER: In regard to Mr. Doner saying they sold cheap Japanese rayons, I do not see that

into particular line fabricated by the Ferman Company you would get either no difference or an inconsequential difference ? A. Well, while in the table it is small, the variations under different classifications are quite extensive. For instance, in that particular year the gain on the price of material -- there was a loss on the price of material of $[illegible].

Q. You mean that the standard costs of the material were too low ? A. There was gain of burden of $181,[illegible]. Gain of inventory of $56,872 and gain on labour of $[illegible]."

THE COMMISSIONER: What is meant by "gain"? The logical word would be "loss" then the standard was ?

MR. KELLOCK: Yes, it would be.

MR. MORDEN: It is loss in some cases.

[illegible] (Answer of [illegible]) [illegible] would mean it would be [illegible].

MR. KELLOCK: The evidence goes on at page 12501 "Q. I know but we are looking at the final result and the final result I say, when you trace it back to individual product, would either be very small or zero no difference at all ? A. It would in that year."

[illegible] Q. [illegible] I do not [illegible] [illegible]

in the evidence quoted on this page.

MR. KELLOCK: At page 7012.

MR. McRUER: He says they sold Japanese rayons but he does not --

MR. KELLOCK: He went on to say that there was a middle class of purchasers in the United States who bought that class of goods, but he did not find the same type of purchaser in Canada in his experience here That is what he said at page 7011, line 15:

"Q. Now what was your experience in the United States in regard to Japanese rayons ? What was the experience you have referred to that made you shy off them here ? A. Well, s r, you understand the Sears Roebuck organization did a country-wide business of a different nature than my present, then the present organization does. We sold more popular price goods over there. Consequently we were able to sell Japanese taffetas -- "

That is the goods.

MR. McRUER: Oh no, there are different kinds of taffetas.

MR. KELLOCK: But he is explaining that the reason he did not deal in these Japanese taffetas in Canada, is that his particular organization, the Simpson Company, did not have a demand for these goods, and his explanation was that he knew that the Sears Roebuck Company in the United States had this middle class of purchasers, as he called them,

in the evidence quoted on this page.

MR. [illegible]: It goes THIS.

Q. Now Sir: He says they will Japanese rayons not be done not --

MR. [illegible]: He went on to say that there was a middle class of producers in the United States who bought that class of goods, but he did not find the same type of producer in Canada in his experience here. That is what he said at page 9031, line 18:

"Q. How what was your experience in the United States in regard to Japanese rayons? What was the experience you have referred to that made you stay off them here? A. Well, s I, you understand the Sears Roebuck organization did a country-wide business of a different nature than my present, then the present organization does. We sell more popular priced goods over there. Consequently we were able to sell Japanese taffetas --"

That is the goods.

MR. [illegible]: Oh no, there are different kinds of taffetas.

MR. [illegible]: But he is explaining that the reason he did not deal in these Japanese taffetas in Canada, is that his particular organization, the Simpson Company, did not have a demand for these goods, and his explanation was that he knew that the Sears Roebuck Company in the United States had this middle class of purchasers, as he called them.

and he says:

"Consequently we were able to sell Japanese taffetas and pongees and satins more freely than we are at the Robert Simpson Company in Montreal. Up until the present time I have not seen sufficient lines of Japanese merchandise to interest us in this particular market.

Q. Dealing with rayons only --

The Commissioner: I don't think that gives you the situation. He says he has not seen the lines to interest this market. He began by saying he would not buy Japanese goods on account of the experience he had with them in the States ? A. Well, your honour, there is in the United States a class of customers, what I should say a customer in between, there is definitely --

By Mr. McRuer: Q. A middle class ? A. A middle class and high class in the United States, and Sears Roebuck catered to the middle class. Consequently we got more business on the Japanese merchandise. Now, coming in here where the business is entirely of a different nature I have hesitated or refrained from buying Japanese merchandise inasmuch as I felt it was definitely for the middle class people and lower. Does that explain ?

By Mr. McRuer: Q. Yes. Well then, as far as rayons are concerned, and leaving out of

and he says:

"Consequently we were able to sell japanese
trifles and porcelain and selling was steady,
then we are at the Robert Simpson Company in
Montreal. By until the present time I have
not seen any Japanese lines of japanese merchan-
dise to interest us in this particular market.

Q. Dealing with Germany only --

The Commissioner: I don't think that
gives you the attention. He says he has not
seen any lines to interest this market. He
began by saying he could not buy Japanese goods
on account of the exp ylance he had with them
in the Orient ? A. Well, your honour,
there is in the United States a class of
customer, what I should say a customer in
Canada. There is a difference —

By Mr. Spence: Q. A middle class ?
A. A middle class and this comes in the
United States, and there Germany entered in the
middle class. Consequently we got more busi-
ness in the Japanese merchandise. Now, coming in
here where the business is entirely of a dif-
ferent nature I have hesitated or refrained
from buying Japanese merchandise because I
feel it not suitable for the middle class
people and lower. Does that explain ?

By Mr. Spence: A. Yes. Well then, so far
as Japan is concerned, our importing out of

consideration at the moment other things; did you handle Japanese rayons ? A. Absolutely.

Q. In Sears Roebuck ? A. Yes, sir.

Q. To what extent would they form part of your rayon business ? A. From the previous figure I gave you approximately 5 per cent of our rayon business.

Q. You found no difficulty in the United States in getting your orders filled for Japanese rayons if you wanted to import them ? A. No, sir, not that I can remember."

MR. McKIM: That does not say anything about these cheap taffetas.

MR. KELLOCK: That is what we were discussing all the way through. Now I went to look up for your lordship the correct reference for Mr. Lowson's evidence. I am now reading from page 9 of my brief, my lord:

"It is inconceivable in any case that Canadian costs should be out to the extent of five cents and six cents a yard, which is the difference between the Canadian cost and the Japanese selling price in Canada of these cheap taffetas."

There is a reference there to Exhibits 146 and 148.

THE COMMISSIONER: Where do you get that five and six cents a yard ?

MR. KELLOCK: That is the difference between the Canadian cost as set out in these exhibits, and the

consideration at the moment other items; did you notice Exhibit Y ? Mr. Armstrong:

Q. In Canada because ? A. Yes, sir.

Q. To what extent would they form part of your import business ? A. Some one percent figure I gave you approximately 5 per cent of our import business.

Q. You found no difficulty in the United States in getting your orders filled for shipments because of your wanted to import from ?

A. No, sir, not that I can remember."

Mr. Collins: That does not say anything about these cheap toilets.

Mr. Alsop: That is what we were discussing all the way through. Now I want to look up for your lordship the correct reference for Mr. Lawson's evidence. I am now reading from page 9 of my brief, my Lord.

"If in inches/millimetres my lord these toilet seats should be cut to the extent of five inches and six cents a yard, which is the difference between the Canadian cost and the Japanese selling price in Japan of these cheap toilets. There is a reference there to Exhibits 146 and 148.

The Court Interposes: Where do you get that five and six cents a yard ?

Mr. Alsop: That is the difference between the Canadian cost as set out in these exhibits, and the

Japanese selling price of these taffetas.

THE COMMISSIONER: The Japanese price here ?

MR. KELLOCK: Yes, the landed price. I go on to say in my brief:

"It is absurd to suggest that Canadian mills would obstinately maintain an unreasonably high price on these cheap lines if all that was required to capture any of the business being taken by the Japanese would be to reduce their selling prices to a more 'equal' level and thus retain their volume."

The evidence there referred to is that of Mr. Whitehead, my lord. Continuing:

"Moreover Mr. Hooper testified that if the Canadian mills reduced their prices on these lines which are meeting Japanese competition to a point where they would sell at thesame price as Japanese goods coming in they would be selling at a loss according to their cost sheets."

Page 16537 follows

Japanese selling price of these bulletins.

[illegible]

MR. ALMOND: Yes, the lowest price. I am to say in my brief:

"It is absurd to suggest that Canadian mills would obstinately maintain an unreasonably high price on these deep lines if all that was required to capture any of the business being taken by the Japanese would be to reduce their selling prices to a more 'equal' level and thus retain their volume."

The evidence there referred to is that of Mr. Mulholland, my lord. Continuing:

"Moreover Mr. Hooper testified that if the Canadian mills reduced their prices on those lines which are meeting Japanese competition to a point where they would sell at thesame price as Japanese goods coming in they would be selling at a loss according to their own figures.

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THE COMMISSIONER: Are they the same goods you are talking about?

MR. KELLOCK: The same goods.

MR. McRUER: They are not the same goods. They are miles different. Look at the two.

MR. KELLOCK: Now, my friend says they are not the same goods.

THE COMMISSIONER: It is a matter of evidence. It is not a matter of mere contradiction, but it strikes me as being important. Mr. Hooper has testified that Canadian mills would have to reduce their prices on these lines which are meeting Japanese competition to a point where they would sell at the same price as Japanese goods, and that implies that certain Canadian goods are higher here than Japanese goods are here, but I want to know if it means the same goods, or different qualities of goods.

MR. KELLOCK: What I am comparing all the way through, my lord, is the taffetas manufactured by the Montreal Cottons and the Canadian Cottons and the taffetas being sold and offered here in Canada from Japan. Now, my friend contended all the way through that the importations of these goods from Japan were not of as good workmanship as the Canadian article. I think that is the fact. The Canadian article has better workmanship.

MR. McRUER: That is the evidence.

MR. KELLOCK: But they are the same construction, made of the same material, and the only difference is insofar as the Canadian article is of a better quality.

THE COMMISSIONER: Are they the same goods you are talking about?

MR. [illegible] They are not the same goods.

MR. MORDEN: They are not the same goods. They are miles different. Look at the two.

MR. KELLOCK: Now, my friend says they are not the same goods.

THE COMMISSIONER: It is a matter of evidence. It is not a matter of mere contradiction, but it strikes me as being important. Mr. Hooper has testified that Canadian mills would have to reduce their prices on these lines which are meeting Japanese competition to a point where they would sell at the same price as Japanese goods, and that indicates that Canadian goods are higher here than Japanese goods are here, but I want to know if it means the same goods, or different qualities of goods.

MR. KELLOCK: What I am comparing all the way through, my Lord, is the taffetas manufactured by the [illegible] Cotton and the [illegible] taffetas being sold and offered here in Canada from Japan. Now, my friend contended all the way through that the importations of these goods from Japan were not of as good workmanship as the Canadian article. I think that is the fact. The Canadian article has better workmanship.

MR. MORDEN: That is the argument.

MR. KELLOCK: But they are the same commodities, same or the same material, and the only difference is [illegible] as the Canadian article is of a better quality.

MR. McRUER: They are not made of the same kind of yarn.

THE COMMISSIONER: You say the only difference is better quality; that is a difference.

MR. KELLOCK: That is a difference, yes, my lord, but it is rayon taffeta in each case, and the only difference is in workmanship. My friend contended that by reason of that difference --

THE COMMISSIONER: What is your argument then; what do you want done about it?

MR. KELLOCK: My argument is this, my lord, I am coming to this point, my lord, and saying to your lordship that the evidence shows that the quantity which has come into Canada of Japanese rayons in the period in question is greater absolutely than the quantity which came into the United States in the same period, that the United States duties were somewhat higher than the Canadian --

MR. McRUER: No, lower.

MR. KELLOCK: Lower, I am sorry, and Mr. Hooper went on to say that the selling prices in the United States of the domestic product manufactured in the United States were somewhat higher than the Canadian selling price of the Canadian product. Now, what is the reason for that situation? The argument I am coming to, my lord - and I say frankly to your lordship my feet are off the ground here, I haven't anything definite that I can point to, but I just draw this to your lordship's attention, you have this situation

Mr. DONOVAN: They are not some of the same kind of

the Commissioner: You say the only difference is

better quality, that is a difference.

Mr. MARTIN: That is a difference, yes, of course,

but it is never twice in each case, and the only

difference is in workmanship. My friend suggested

that by reason of that difference --

THE COMMISSIONER: What is your argument then;

what do you want done about it?

Mr. ELLIOTT: My argument is this, my lord, I am

coming to this point, my lord, and saying to your

lordship that the evidence shows that the quantity

which has come into Canada of Japanese ingots in the

period in question is greater absolutely than the

quantity which came into the United States in the same

period, and the prices which were paid were somewhat

higher than the Canadian --

Mr. MONDER: No, lower.

Mr. ELLIOTT: Lower, I am sorry, and he

went on to say that the selling prices in the United

States of the domestic product manufactured in the

United States were somewhat higher than the domestic

selling price of the domestic product. Now, what is

the reason for that situation? The argument I am

coming to, my lord - and I say frankly to your Lor-

dship my feet are off the ground here, I haven't suffici-

ently - but I can point to, yet I can say that as

your lordship's situation, you have this situation

that the volume that has come into Canada is larger than the volume that has come into the United States. The Canadian selling price, according to the evidence, is somewhat lower than the American, the duty situation is as I have mentioned, and what is the explanation for an absolutely larger volume coming into Canada when one would expect, taking into consideration the much larger market in the United States, and the more favourable conditions for importing into the United States, if that is all there is to it, one would expect that the volume of imports into the United States would be very much larger, and my submission is -- and I have no foundation for it beyond that -- that there must be some method used in connection with the admission of imports into the United States that tends to keep them out; whether it is a re-appraisal or something of that kind, I don't know.

MR. McRUER: Mr. Doner said there wasn't.

MR. KELLOCK: I know; I am saying there are the facts. One cannot explain it.

THE COMMISSIONER: What do you want to be done? Should there be some method put into effect here that would keep them out, too; is that what you mean?

MR. KELLOCK: My whole argument all the way through--

THE COMMISSIONER: Would you say this amount of importations is a large one, 128,581 pounds?

MR. KELLOCK: I did not hear your lordship.

THE COMMISSIONER: Do you say that the amount of the importations which you give there, 128,581

that the volume that has come into Canada is larger than the volume that has come into the United States. The Canadian selling price, according to the evidence, is somewhat lower than the American, the duty attached is as I have mentioned, and what is the explanation for an absolutely larger volume coming into Canada when one would expect, taking into consideration the much larger market in the United States, and the more favourable conditions for importing into the United States, if that is all there is to it, one would expect that the volume of imports into the United States would be very much larger, and my submission is -- and I have no foundation for it beyond that -- that there must be some method used in connection with the admission of imports into the United States that tends to keep them out; whether it is a re-appraisal or something of that kind, I don't know.

MR. [illegible]: I know; I am anything there are the facts. One cannot explain it.

THE COMMISSIONER: What do you want to be done? Should there be some method put into effect here that would keep them out, too; is that what you want?

MR. [illegible]: My whole argument all the way through--

THE COMMISSIONER: Would you say this amount of importations is a large one, Mr. [illegible]?

MR. [illegible]: I did not hear your lordship.

THE COMMISSIONER: Do you say that the amount of the importations from the U.S.A. [illegible]

pounds, is a large amount?

MR. KELLOCK: January to July, yes, my lord, and it is increasing. I am going to give your lordship further information about that. My lord, at the foot of page nine --

THE COMMISSIONER: Suppose nothing at all came into the United States?

MR. KELLOCK: Came into the United States?

THE COMMISSIONER: Yes, instead of the very small quantity; would you go on and say we should also take measures that nothing at all should come into here, because I don't quite understand your viewpoint, because you say there are more Japanese goods of this kind coming into Canada than the United States. Evidently you argue we should take steps to see that less comes into this country than into the United States.

MR. KELLOCK: No, my lord; put it this way, the evidence given by Mr. Hooper, and which my friend argues, is that there is no reason to fear importations into Canada. He says that is all there is and look at the experience of the United States which have had a comparable duty situation for some time. I am only meeting that argument; that is all. I am simply saying --

THE COMMISSIONER: You say that the fact being true that the importations of Japanese goods of this class into the United States being very small -- well, you say there must be some secret measure taken there to keep them out.

[illegible], is a large amount?

MR. KINGDON: Answer to only, yes, my lord, and it is interesting. I am going to give your lordship further information about that. My lord, at the foot of page nine --

THE COMMISSIONER: Suppose nothing at all came into the United States?

MR. KINGDON: Come into the United States?

THE COMMISSIONER: Yes, irrespective of the very small quantity; would you go on and say we should also take measures that if there is (it would seem) some [illegible], [illegible] you say there are some dangerous goods of this kind coming into Canada than the United States. Evidently you argue we should take steps to see that less comes [illegible].

MR. KINGDON: No, my lord; put it this way, the evidence given by Mr. Hooper, and which my friend argues, is that there is no reason to fear importations into Canada. He says that is all there is and look at the experience of the United States which have had a considerable duty attention for some time. I am only meeting that argument; that is all. I am simply arguing --

THE COMMISSIONER: You say that the fact being true that the importations of [illegible] goods of this class [illegible] [illegible] -- [illegible] [illegible] [illegible] [illegible] [illegible] to keep them out.

MR. KELLOCK: That is all I can say.

THE COMMISSIONER: You are not helping me in any way.

MR. KELLOCK: I cannot help your lordship further than that.

MR. McRUER: Well, Mr. Hooper's evidence was that these competing fabrics had too much mill spread in Canada, that the price was too high, that your people did not bring them down to meet the Japanese and so therefore the Japanese were able to sell under them.

MR. KELLOCK: Of course, I have met that, my lord, that if my cost is five cents higher than the Japanese goods are going to be sold for here what is the possibility of bringing it down?

MR. McRUER: That is your standard cost.

MR. KELLOCK: I want to deal with the quality of these Japanese rayons. I deal with that at the foot of page nine.

"It is submitted that it is impossible to close one's eyes to the ability of the Japanese manufacturer to produce goods of a quality as high as any produced in Canada and in a wide range of patterns, colours and constructions."

In other words, my lord, we should not just consider--

THE COMMISSIONER: You say the quality is as high?

MR. KELLOCK: I do, my lord, and I say, my lord, we should not confine attention to these cheap taffetas which came in first.

MR. FLOCKT: That is all I can say.

THE CHAIRMAN: You are not helping me in any way.

MR. KILGOUR: I cannot help your knowing further than that.

MR. MURPHY: Well, Mr. Hooper's evidence was that these competing fabrics had too much will around in Canada, that the price was too high, that your people did not bring them down to meet the Japanese and so therefore the Japanese were able to sell under them.

MR. KILGOUR: Of course, I have met that, my lord, that if my coat is five cents higher than the Japanese goods are going to be sold for have what is the possibility of bringing it down?

MR. HOOPER: That is your own kind cost.

MR. KILGOUR: I want to deal with the quality of these Japanese rayons. I deal with that at the foot of page nine.

" It is admitted that it is impossible to close one's eyes to the ability of the Japanese manufacturer to produce goods of a quality as high as any produced in Canada and in a wide range of patterns, colours and constructions."

In other words, my lord, we admit not just constructions.

THE CHAIRMAN: You say the quality is as high?

MR. KILGOUR: I do, my lord, and I say, my lord, we could not construe anything in these cases arising out of Vienna.

"The exhibits already referred to"-- and I set them out --"show what has already come into Canada.

The following exhibits show further what the Japanese manufacturer is producing and selling."

Now, might I give your lordship some figures at this point as to what has come in with regard to rayons and mixture fabrics from Japan.

THE COMMISSIONER: In what time?

MR. KELLOCK: In 1935 there were 41,363 pounds.-

MR. McRUER: Where do these come from?

MR. KELLOCK: Japan.

MR. McRUER: But the figures?

MR. KELLOCK: Trade of Canada.

THE COMMISSIONER: That is the calendar year then?

MR. KELLOCK: Yes, my lord; 1936 there were 347,786 pounds. Now, my lord, in the month of January, 1936, that is the first month after the change of duties, there was 6,045 pounds. In December of 1936 there were 16,798 pounds. In January of this year, 1937, after the proclaimed value of the yen fell from 39.5 to 35, there were 66,873 pounds came in. Your lordship sees the increase between December and January. Now, at the top of page 10 I am still on the question of quality, my lord.

THE COMMISSIONER: Are you going to be able to point out to me what proportion of our market that represents, in any way at all?

MR. KELLOCK: Yes, I can, my lord, and I do a little later.

"Exhibit 400 consists of a wide range of samples obtained by Courtaulds Limited of goods being sold in the Australian market in quantity. The samples in this exhibit were pronounced by the witnesses, Switzer and Fletcher, buyers for large retail organizations, as being good goods. The analysis by the Ontario Research Foundation of the constructions of the various cloths in this exhibit is enclosed with the samples in the exhibit and this analysis reveals that some of the cloths are highly fabricated and difficult to manufacture, for instance, samples 8 and 9. Many of the samples show very attractive printing and the evidence of the buyers, Switzer and Fletcher, already referred to, coincides with one's impression on inspecting the samples.

Exhibit 362 shows that in the year 1935 the imports into Australia of Japanese rayons were 65,800,000 yards, while British rayon imports to Australia in the same year were 2,840,000 yards. It is submitted these large quantities could not have been confined to cheaper qualities. The evidence bears this out."

THE COMMISSIONER: Pardon me; that gives me some idea of proportions there; in 1935, Australia, with a population of how many, six million?

MR. KELLOCK: I don't know, my lord.

THE COMMISSIONER: Close to seven million, imported 65,800,000 yards of Japanese rayons, and we,

" Exhibit 500 consists of a wide range of samples obtained by Australia, typical of those being sold in the Australian market in country. The samples in this exhibit were commended by the witnesses, Mulvey and Fletcher, buyers for large retail organisations, as being good goods. The analysis by the textile research laboratories of the constituents of the various fibres in this exhibit is enclosed with the samples in the exhibit and this analysis reveals that some of the cloths are highly fabricated and difficult to manufacture, for instance, samples 3 and 5. Many of the samples show very attractive patterns and the evidence of the buyers, Mulvey and Fletcher, already referred to, coincides with our impression on inspecting the samples.

Exhibit 502 shows that in the year 1935 the imports into Australia of Japanese woven goods were 85,000,000 yards, while British woven imports to Australia in the same year were 3,000,000 yards. It is submitted these large quantities could not have been confined to cheaper quality goods.

[illegible] gives an idea of proportions there; in 1936, Australia, with a population of how many, six millions?

MR. KINLOCH: I don't know, my lord.

[illegible]

in Canada, with a population of about eleven million in 1936 only imported 347,000--

MR. McRUER: One is pounds and the other is yards.

THE COMMISSIONER: What is the relation between the pound and the yard?

MR. HOOPER: About four yards per pound.

THE COMMISSIONER: Mr. Kellock, putting it on that basis --

MR. HOOPER: About five yards per pound.

THE COMMISSIONER: Put it on the basis of five yards per pound, and you have 13,000,000 pounds imported into Australia in 1935 and you have 347,000 pounds imported into Canada in 1936.

MR. KELLOCK: Of course, your lordship will bear in mind 1936 is the first year, and it takes time for things to get going, and your lordship sees the trend. I am told, my lord --

THE COMMISSIONER: Well, I suppose they intended that some goods should come in otherwise there would be no use making treaties.

MR. KELLOCK: I am told, my lord, there is no domestic weaving rayon industry in Australia. Now, paragraph 25; I just refer to exhibits 426 and 427, which are a range of samples of fabrics obtained by Butterfield and Company in New York, and a visual examination of those shows their quality and their range. With regard to exhibit 427, Mr. Doner said that the samples he examined --

in Canada, with a population of about eleven million in 1926 only imported 847,000--

MR. MACLEAN: One is pounds and the other is yards.

HON. CHAIRMAN: That is the [illegible] between the pound and the yard?

[illegible]

THE CHAIRMAN: Mr. Flemming, nothing is on this Table --

[illegible]

THE HON. FLEMMING: Put it on the basis of five yards per pound, and you have 12,000,000 pounds imported into Australia in 1926 and you have 847,000 pounds imported into Canada in 1926.

MR. FLEMMING: Of course, your Lordship will know it was 1926 is the first year, and it takes time to bring to our notice, and your Lordship knows the trend I am told, by load --

HON. CHAIRMAN: Well, I suppose that instead that more goods should come in otherwise there would be use making treaties.

MR. MACLEAN: I am told, my lord, there is no Commonwealth working tariff in Australia.

Item, paragraph 85; I just refer to counts 406 and 407, which are a range of samples of Boorkan yarns by Butterfield and Company in New York, and a variation of those shows that [illegible] [illegible] [illegible].

[illegible]

THE COMMISSIONER: Pardon me a moment, just to make sure that I follow you there.

MR. KELLOCK: I am at paragraphs 25 and 26.

"With regard to Exhibit 427, the witness Doner said that the samples he examined in this exhibit were perfect goods."

I showed him the samples in the box and he said they were perfect goods.

"Exhibit 397 analyzes exports of Japanese rayons for the year 1935".

This is all Japanese rayon, exports from Japan to all countries.

"The exports are classified according to types of construction of the goods. It is interesting to notice that taffetas and poplins formed only approximately 2½% of the total rayon fabric exports in the year 1935, being 9,353,173 square yards out of total exports of 424,141,437 square yards."

Now, taffetas are the ones that made themselves felt in evidence first at the beginning of 1936, but your lordship sees what a small proportion of the Japanese range, of the Japanese output, they form.

"The largest single item was 124,212,824 square yards of crepe and kabe tissue".

MR. McRUER: What is that?

MR. KELLOCK: Just read on.

"There is a sample of kabe crepe on p.19 of Exhibit 1197 from which it will be seen that

The COURT REPORTER: Exhibit 26 is a document, just to make sure that I follow you there.

MR. [illegible]: I am at paragraphs 25 and 26.

"With respect to Exhibit 27, the witness [illegible] said that the samples be examined in this exhibit were perfect goods."

I showed him the samples in the box and he said they were perfect goods.

"Exhibit NO7 analyzes exports of Japanese wares for the year 1936".

This is all Japanese ceramic exports from Japan to all countries.

"The exports are classified according to types of construction of the goods. It is interesting to note that terraces and porcelain formed only approximately 25% of the total ceramic [illegible] exports in the year 1936, being 6,[illegible],175 square [illegible] of total exports of [illegible] square yards."

Now, terraces are the ones that made a preclusive fact in evidence first at the beginning of 1936, but you forthrightly see what a small proportion of the Japanese [illegible], of the Japanese output, they form.

"The largest single item was 144,814,004 square yards of crocs and tube tiles".

[illegible] that is [illegible]

[illegible] Jay that was.

[illegible] Jay meaning of tube crocs on p.19 of [illegible]

"the sample is a crepe of fine construction and finish. Exhibit 397 shows also that while this material formed the largest single item in the 1935 exports it also was the highest priced cloth exported, having a value of 11.97¢ per square yard."

That is just on the point that it takes time for these things to come, my lord.

" Exhibits 429-434 (inclusive) consist of a range of samples secured from the agent of Mitsui & Company of Montreal in the early part of 1936. These samples are a wide range and are of good quality.

Further, a buyer for a store who is 'only interested in the higher class qualities of rayons' found some interesting qualities in the Japanese rayon shown to him. This same buyer had in previous years bought Japanese goods - both rayons and silks - in quite a large way and testified that they were quite satisfactory merchandise.

Another Canadian buyer directly stated that offers of better class Japanese rayons were much more extensive in 1936 than in any previous year."

That was Mr. Mathewson.

" It is submitted, therefore, that it is idle to contend, that the Japanese are unable to manufacture anything other than the cheap taffetas. It is further submitted that Japanese are not only

the sample is a crepe of fine construction and finish. Exhibit 407 shows also that while this material formed the largest single item in the 1938 exports it also was the highest priced cloth exported, having a value of 11.97¢ per square yard."

That is just on the point that it takes time for these things to come, my lord.

"Exhibits 429-434 (inclusive) consist of a range of samples secured from the agent of a firm a company of Montreal in the early part of 1938. These samples are a wide range and are of good quality.

Another, a buyer for a store who is "only interested in the higher class quality of rayons" found some interesting qualities in the Japanese rayon shown to him. This same buyer had in previous years bought Japanese goods - rayons and silks - in quite a large way and testified that they were quite satisfactory merchandise.

Another Canadian buyer directly stated that offers of better class Japanese rayons were much more extensive in 1938 than in any previous year."

It is submitted, therefore, that it is idle to contend, that the Japanese are unable to [illegible] [illegible] the [illegible] [illegible].

It is further submitted that Japanese are not

"able to manufacture goods of quality competing with those of the Canadian manufacturer but are able to lay them down in Canada at prices with which the Canadian manufacturer finds himself unable to compete.

The Japan Silk Year Book, 1935-1936" -- which is the latest thing that has come out of Japan that I know of -- "has this to say at page 380:

'Japanese rayon technique is so far advanced that such fabrics produced here now as voile, georgette and kabe are almost equal to the silk fabrics in touch and lustre and difficult to distinguish from them due principally to advanced technique of throwing. In lustre, subdued rayon resembles raw silk, while improvements are being made to obtain the desired touch effect. The fabric, however, easily wrinkles and does not stand washing so well as silk fabrics. These are matters that call for prompt improvements'".

Then, dealing with the condition of production in 1934 the same exhibit says:

"' The foreign demand for Japanese rayon fabrics remarkably increased in 1934 on account of the superiority and cheapness of them and the fall in the foreign exchanges. To meet it the weavers made greater efforts for improving quality, designing new patterns and cultivating new markets in co-operation with the Government authorities under a wise policy.

"'Consequently, in the year the rayon weaving industry in this country made an epoch-making development and enjoyed greater prosperity than before. This greater activities'"-- this is the language of the book, my lord --"'of the Japanese trade seriously warned the foreign countries, which had to take measures to prevent the importation of the Japanese goods. In the circumstances, during the first half of 1934 the rayon weaving industry in this country was very active, and many mills were set up and extended although in the second half of it a steady decline in the market and the foreign measures taken against the Japanese goods made the weavers hold off production somewhat'".

Then, I compare Japanese selling prices in Canada with Canadian costs. First, 27" plain taffetas. They are dealt with in exhibits 148 and 417, and this quotation was a circular letter --

"--sent out to the trade by A. B. Fisher & Company Limited, dated January 4, 1936, giving quotations on these goods. Exhibits 146 and 419 give the costs of a Canadian mill on these goods.

From these exhibits it appears that these Japanese cloths were being sold as much as 5¢ per yard below the Canadian cost.

Brocaded: Exhibits 148, 417 and 418 show that Japanese brocaded taffetas were being sold in Canada at as much as 5½¢ per yard below Canadian Costs.

"Consequently, in the year the foreign textile industry in this country made no good-sized investment and employed greater property than labor. This greater activities"-- this is the language of the book, my lord --"of the Japanese trade certainly moved the foreign competition, which had to take measures to prevent the importation of the Japanese goods. In the circumstances, owing the fixed tariff of 1924 the foreign textile industry in this country was very active, and many mills were set up and extended although in the second half of 1924 a steady decline in the market and the foreign measures began against the Japanese goods from the neutralized of protection commerce".

Then, I compare Japanese selling prices in Canada with domestic costs. First, 27" white muslins. They are dealt with in exhibits 148 and 417, and this proposition was a circular letter --

"--sent out to the trade by R. H. Fisher & Co. Limited, dated January 4, 1926, giving quotations on these goods. Exhibits 146 and 419 give the costs of a Canadian mill on these goods.

From these exhibits it appears that these Japanese cloths were being sold as much as 5¢ a yard below the Canadian cost.

Proceeded: Exhibits 147, 417 and 418 show that Japanese broadcloth was being sold as much as 5¢ a yard below the Canadian cost.

(b) Four Standard Crepes: Japanese quotations on 4 crepes of a type being sold in large volume in Canada"-- now, those are the Canadian goods that are being sold in large volume in Canada --

"--were obtained and the information with regard to them is contained in Exhibits 421 and 422."

MR. McRUER: There is no evidence of sales of them.

MR. KELLOCK: No, quotations.

"Exhibit 421 gives the CIF quotations and Exhibit 422 gives the Japanese landed prices in Canada after all duties are paid. Exhibit 423 gives the costs of a Canadian mill on the same cloths and Exhibit 424 compares Exhibits 422 and 423, showing that Japanese landed duty-paid prices in Canada are below Canadian sales values by the following amounts per lb."--

In the case of rough crepe, dyed .43 cents and printed .66 cents. Canton crepe .57 cents -- that, my lord, is not .43 cents. It is 43 cents.

THE COMMISSIONER: There should not be any point there.

MR. KELLOCK: That is dollars, it is .43 dollars, 43 cents, my lord, and printed 66 cents. That point should not be there. Canton crepe, 57 cents for dyed and 73 cents for printed. Sand crepe 18 cents, dyed, and 21 cents printed, and flat crepe(taffeta) 32 cents dyed, and 50 cents printed. Then, taking exhibits 468 to 473 the Japanese landed price is lower in cents per yard the following figures. This is per

on a crepes of a type being sold in large volume in Canada"-- now, those are the Canadian goods that are being sold in large volume in Canada -- "--were obtained and the information with regard to them is contained in Exhibits 421 and 422."

MR. HOYT: There is no evidence of sales of them.

MR. [illegible]: Exhibit 421 gives the CIF quotations and Exhibit 422 gives the Japanese landed prices in [illegible] gives the costs of a Canadian mill on the same cloths and Exhibit 421 compares [illegible] prices in Canada are below landed duty-paid [illegible] by the following amounts per lb.:--

In the case of rough crepe, dyed .45 cents and [illegible] .41 cents. [illegible] is not .45 cents. It is 45 cents.

THE COMMISSIONER: There should not be any point there.

MR. KELLOCK: That is correct. It is .45 dollars 45 cents, my lord, and printed 65 cents. That point should not be there. Crepe crepe, 57 cents for dyed and 73 cents for printed. Sand crepe 14 cents, [illegible] and 21 cents printed, and flat crepe (taffeta) 35 cents dyed, and 50 cents printed. Then, taking exhibits 458 to 473 the Japanese landed price is [illegible] cents per yard the following figures. This is

yard. The other was per pound. Taffetas, 5.02 cents --

THE COMMISSIONER: This is in cents.

MR. KELLOCK: This is in cents, my lord, yes, cents per yard. Taffetas, 5.02 cents; brocaded taffeta 11.13 cents. Rayon crepe, 5.14 cents, rayon satins, 6.46 cents, all rayon satins, 3.63 cents. Then, the Mitsui samples.

"Exhibits 429 to 434 inclusive contain the details of a group of Japanese rayons secured from the agent of Mitsui & Co. in Montreal and Canadian costs of the same goods. They show that the Japanese landed duty paid price per pound was lower than the Canadian cost by - in cents per pound -

	Cents per pound
(Exhibit 430) Flat Crepe(Taffeta)	
Sample 1 -	33¢
Sample 2 -	69¢
(Exhibit 431) Canton Crepe(dyed)	
Sample 1 -	15¢
Sample 2 -	35¢
(printed) -	46¢
(Exhibit 434) Check lining	
Sample 1 -	1.30¢
Sample 2 -	1.01¢ "

MR. McRUER: In all the costs in the exhibits you refer to there are no detailed costs at all.

MR. KELLOCK: They are the costs sworn to.

MR. McRUER: They didn't produce any costs.

MR. KELLOCK: The costs were sworn to. I don't know whether you cross-examined on them or not.

MR. HOOPER: These are Canadian Cottons.

MR. McRUER: Canadian Cottons haven't got a costing system.

MR. HOOPER: They cannot be Canadian Cottons costs.

5 MR. KELLOCK: My friend says Canadian Cottons admitted they haven't got a costing system. I think Mr. Bruneau stated to your lordship they had about 40 books of a costing system.

MR. McRUER: The evidence is before the Commission,

10 and not what my friend, Mr. Bruneau, says.

MR. KELLOCK: Well, I disagree with my friend. That is not the evidence at all.

MR. McRUER: You said they are as compared with the Canadian costs, but what we have here is that

15 Canadian Cottons haven't got a costing system that checks out with their actual costs of production.

MR. KELLOCK: But I am not at all sure when you are referring to these exhibits they are Canadian Cottons. Some of these are Montreal Cottons. Do they

20 say Canadian Cottons?

MR. McRUER: Yes, they say so.

MR. KELLOCK: I was dealing with exhibits 429 to 434. My friend hands me exhibits 468 to 473, which is

25 the paragraph above. These are not Canadian Cottons. Paragraph (c) deals with Canadian Cottons but paragraph (d) doesn't. I haven't in mind at the moment who they are but I think they are Montreal Cottons.

MR. McRUER: Well, we will get them out.

30 MR. KELLOCK: Paragraph 35 --

[illegible]

MR. [illegible]: They cannot be Canadian Cottons seats.

MR. [illegible]: My friend says Canadian Cottons said they haven't got a coating system. I think Mr. Truman stated to your Lordship that about 40 hooks of a coating system.

MR. [illegible]: The evidence is before the Commission and not what my friend, Mr. Truman, says.

MR. [illegible]: Well, I disagree with my friend. That is not the evidence at all.

MR. [illegible]: You said they are as connected with the Canadian seats, but what we have here is that Canadian Cottons haven't got a coating system that checks out with their actual sales of production.

MR. [illegible]: But I am not at all sure when you are referring to these exhibits they are Canadian Cottons. Some of these are Montreal Cottons. Do they say Canadian Cottons?

MR. [illegible]: Yes, they do.

MR. [illegible]: I was dealing with exhibits 440 to 454. My friend hands me exhibits 440 to 475, which the paragraph above. These are not Canadian Cottons. Paragraph (c) deals with Canadian Cottons but paragraph (d) doesn't. I haven't in mind at the moment who they are but I think they are Dominion Cottons.

MR. [illegible]: Well, we will get them out.

MR. [illegible]: Paragraph 55 --

"... It will, therefore, be seen that in all these instances with regard to rayons the Canadian costs are invariably higher".

These costs are sworn to, my lord, and are not broken down in any way by cross-examination.

MR. McRUER: Oh yes, they are. They were broken down because they admit they didn't have a costing system to tie in with the records of the company.

MR. KELLOCK: I will deal with the question of costs separately. It is a separate argument in itself.

"It is submitted, therefore, that the Japanese under existing conditions are in a position to acquire for themselves the Canadian market formerly supplied by the Canadian manufacturer as rapidly as the Japanese can build up their merchandising organization in Canada. Their ability to do this will be accelerated in 1937 and in subsequent years by reason of the guaranteed reduction in the currency dumping duty due to the reduction in the proclaimed value of the yen in accordance with paragraph 3 of Exhibit 401 set out at page 6266 of the evidence. The proclaimed value of the yen for 1937 is now 35¢ instead of 39.5¢. This reduces at once the currency dumping duty on sales by Japanese exporters to Canadians and similarly reduces the price at which the importer in Canada imports goods on consignment".

In the same Silk Year Book for 1935-36, under the heading of "Progress of Production" it is stated --

" It will, therefore, be seen that in all
these instances with regard to rayons the
installation costs are invariably higher".
These costs are more to, my lord, and are not known
here in any way by cross-examination.

Mr. McDONALD: Oh yes, they are. They were broken
down because they asked they didn't have a crating
system to tie in with the tonnage of the company.

Mr. McDONALD: I will deal with the question of
costs separately. It is a separate argument in itself.

"It is submitted, therefore, that the Commerce
Commission should find as a question of
equity the Commission's order should be
supplied by the Commission that there is no liability
as the Commerce can build up their rail-connection
communication in Canada. Their ability to do this
will be accelerated in 1967 and in subsequent
years by reason of the guaranteed subsidy in
the currency income only due to the reduction in
the proclaimed value of the yen in accordance
with paragraph 5 of Schedule A1 set out at the
close of the Evidence. The proclaimed value of
the yen for 1966 is now has lowered to 0.8%.
This reduces the cost of crating, handling and
sales by approximately 2% to Canada and
similarly reduces the price at which the importer
in Canada buys the goods at destination".

In the year 1966 that the Commission, under the
heading of "Progress of Technology" it is stated --

"'The production of rayon fabrics is multiplying yearly as the result of increased proficiency of the workers both manually and mechanically, while the high grades are being turned out in increasing quantities. It is believed that the price of rayon in Japan will fall still further as the result of increased output when the price of rayon fabrics will also decline in proportion permitting their exportation in larger quantities than hitherto'".

Then, with regard to cotton piece goods duties immediately prior to the 1st of January, 1936, the situation was as follows:-

" Imports of bleached cotton goods into Canada from Japan were subject to the following rates of duty:-

Ad valorem	-	22½%
Specific	-	3½¢ per pound
Excise	-	3%
Surtax	-	33-1/3%
Currency dumping duty.		

Immediately after the 1st of January, 1936, the surtax was removed and the proclaimed value of the yen was reduced from 41.5 to 39.5¢. In other respects the duty remained the same."

THE COMMISSIONER: That reduction was from what?

MR. HALLCOCK: From 41.5, my lord. That is stated just above there under the heading of currency dumping duty.

"In other respects the duty remained the same. There was prior to the 1st of January, 1936, a

"The production of rayon textiles in Japan is entirely due to the result of increased proficiency of the workers both manually and mechanically, while the high grades are being turned out in increasing quantities. It is believed that the price of rayon in Japan will fall still further as the result of increased output when the price of rayon textiles will also decline in proportion according their exportation in larger quantities than hitherto".

Then, with regard to cotton piece goods textiles immediately prior to the 1st of January, 1932, the situation was as follows:-

" Imports of bleached cotton goods into Canada from Japan were subject to the following rates of duty:-

ad valorem	-	14%
specific	-	3½ per pound
minimum	-	3c
surtax	-	30-1/2%

Immediately after the 1st of January, 1932, the surtax was removed and the specified value of the yon was reduced from 41.5 to 32.5c. The other remarks the jury considered the same."

The Deputy Minister: That reduction was from what to what? Mr. Lemieux: From 41.5, by 9c. That is at the last above there under the heading of currency depreciation.

"The Chairman: The 1st January, 1932, was prior to the 1st of January, 1933, a

"fixed valuation in the case of cotton flannelettes of 25¢ and in the case of tweeds .40¢"--

MR. HOOPER: That is incorrect.

THE COMMISSIONER: You should not have the point there.

MR. HOOPER: That is incorrect anyway, my lord. Those figures are not right.

MR. BERRY: What is wrong with them?

MR. HOOPER: The fixed valuation on the cotton flannelette is 40 and 44 cents a pound, and on tweeds 25 cents a pound.

THE COMMISSIONER: Where do you get the figures from, Mr. Kellock?

MR. KELLOCK: I give the source there, my lord, exhibit 536, and the evidence.

THE COMMISSIONER: If there is any mistake it better be corrected.

MR. KELLOCK: You suggest I have the figures reversed; is that it?

THE COMMISSIONER: Is that what is wrong? The figures are reversed?

MR. HOOPER: The fixed valuation on cotton flannelettes is 40 cents a pound in one case and 44 cents in another, depending on the weight of the fabric, and on cotton tweeds 25 cents a pound.

THE COMMISSIONER: It appears your figures are reversed then, Mr. Kellock.

MR. KELLOCK: They are, my lord.

THE COMMISSIONER: That is what Mr. Hooper says.

MR. KELLOCK: Mr. Berry says the same thing. That

"Fixed valuation in the case of cotton flannelette of 35¢ and in the case of tweeds.(35¢)"--

Mr. [illegible]: That is incorrect.

THE COMMISSIONER: You should not have the point [illegible].

Mr. MOORE: That is incorrect entirely, my lord. Those figures are not right.

Mr. [illegible]: What is wrong with them?

Mr. MOORE: The fixed valuation on the cotton flannelette is 40 and 44 cents a pound, and on tweeds 35 cents a pound.

THE COMMISSIONER: Where do you get the figures from, Mr. McIlook?

Mr. [illegible]: I give the source there, my lord, [illegible].

THE COMMISSIONER: If there is any mistake it better be corrected.

Mr. [illegible]: Is my argument I have the figures reversed; is that it?

THE COMMISSIONER: Is that what is wrong? The figures are reversed?

Mr. MOORE: The fixed valuation on cotton flannelettes is 40 cents a pound in one case and 44 cents in another, according as the weight of the fabric, and on cotton tweeds 35 cents a pound.

THE COMMISSIONER: It appears your figures are reversed then, Mr. McIlook.

Mr. [illegible]: They are, my lord.

THE COMMISSIONER: That is what it. Proceed again.

Mr. [illegible]: Mr. Power gave the book [illegible]. That

is correct, my lord; they are just reversed. I am sorry. This was removed after the 1st of January, 1936.

"This item was not, however, of much importance. Cotton imports into Canada from Japan are dealt with in Exhibits 540, 541 and 585."

I am going to give your lordship some figures on that a little later.

" an example of the Japanese selling prices in Canada of manufactured cotton articles can be taken from the July, 1936 imports of cotton shoe laces which were 4,082 pounds valued at $1,320 at 39½¢ to the yen. This is an average value, at 29¢ to the yen, of 23¾¢ per pound, but the 2/30's yarn from which this product is made alone cost 39½¢ a pound in April 1936 in Canada."

Then, with regard to real silk duties.

" With regard to importations from Japan of real silk fabrics, the situation before and after the 1st of January, 1936, was exactly the same as the situation with regard to cotton piece goods except that there was no fixed valuation in the case of silk fabrics.

Exhibits 406 and 407 illustrate the level of Japanese prices of ribbons and elastics as compared to the Canadian costs of similar articles.

Japanese elastic webs are shown to be below the Canadian costs by the following amounts per gross yards"--

is correct, my lord; they are just revenue. I am sorry. This was removed after the 1st of January, 1924.

"This item was not, however, of much importance. Cotton imports into Canada from Japan are dealt with in Exhibits 540, 541 and 586."

I am going to give your lordship some figures on that a little later.

" An example of the Japanese selling price in Canada of manufactured cotton articles can be taken from the July, 1926 imports of cotton sheeting which were 4,082 pounds valued at $1,320 at 32¢ to the yen. This is an ad rem value, at 29¢ to the yen, of 32¢ per pound, but the 2/6d's yen from which this product is made alone cost 39¢ a pound in April 1926 in Canada, with regard to real silk duties.

" With regard to importations from Japan of real silk textiles, the situation before and after the 1st of January, 1924, was exactly the same as the situation with regard to cotton piece goods except that there was no fixed valuation in the case of silk fabrics.

Exhibits 404 and 407 illustrate the level of [illegible] Japanese silk textile goods are sold in the [illegible] cross yards"--

In the case of one inch, one sample is $2.95 and the other sample $4.85. 1-1/8 inch, $5.71. 1-3/8 inch, one sample $7.22, another sample $5.26 and the third sample $6.45.

" Japanese rayon ribbons, duty-paid prices, are below the Canadian costs to the following extent, per 1,000 yards"--

MR. McRUER: Is that the selling price or cost because I notice the exhibit you refer to has printed on it "our cost" -- in regard to one of the others.

THE COMMISSIONER: Is that exhibit 407?

MR. KELLOCK: Yes, my lord. Are you speaking of 407?

MR. McRUER: No, the Montreal Cottons one you have referred to.

MR. KELLOCK: My friend isn't referring to this at all.

MR. McRUER: I know, but is this not the same thing?

MR. KELLOCK: These are costs of the Belding Corticelli Company.

MR. McRUER: Do they show how they are made up?

MR. KELLOCK: Yes, there is full detail there.

MR. McRUER: No, there isn't.

MR. KELLOCK: Pardon?

MR. McRUER: No, there isn't full detail of how they are made up.

MR. KELLOCK: It is attached here.

MR. McRUER: There is a card with some elastic on it.

In the case of one inch, one sample is $3.00 and the other sample $4.25. Every inch, $4.75. Every inch, one sample $7.25, another sample $5.00 and the third sample $6.45.

Japanese rayon ribbons, duty-paid prices, are below the Canadian costs to the following extent, per 1,000 yards--

MR. McMAHON: Is that the selling price or cost because I notice the exhibit you refer to has printed on it "our cost" -- in regard to one of the others.

THE COMMISSIONER: Is that exhibit 40?

MR. KELLOCK: Yes, my lord. Are you referring of 40?

MR. McMAHON: No, the numerical numbers are you have referred to.

MR. KELLOCK: My friend isn't referring to this at all.

MR. McMAHON: I know, but is this not the same thing?

MR. KELLOCK: These are costs of the Belding Corticelli Company.

MR. McMAHON: Do they show how they are made up?

MR. KELLOCK: Yes, there is full detail there.

MR. McMAHON: No, there isn't full detail of how they are made up.

MR. KELLOCK: It is attached here.

MR. McMAHON: There is a card with some figures on it.

MR. KELLOCK: If you look on the back here --

MR. McRUER: That is Japanese.

MR. KELLOCK: No, that is Belding Corticelli.

THE COMMISSIONER: Mr. Kellock, we will adjourn for a few minutes.

-- The Commission adjourned for a short recess.

(page 16557 follows)

ROBT. BRYDIE
CHARTERED STENOGRAPHER
TORONTO - CANADA

Mr. KNOWLES: If you look on the back page --

Mr. MACDONALD: That is correct.

Mr. KNOWLES: No, that is relating horizontally.

THE CHAIRMAN: Mr. Chairman, we will adjourn for a few minutes.

-- The Commission adjourned for a short recess.

(page 18807 follows)

-- On resuming at 12.P.M.

MR. KELLOCK: My lord, I was dealing with the foot of page 15:

"Japanese ½ inch rayon elastics were selling in Montreal for $1.25 per gross yards in small quantities and for $1.00 gross yards in large quantities. The Canadian factory cost of the same article without selling cost is $1.21."

Then as to the low Japanese cost of production:

"The evidence discloses that the ability of the Japanese exporter to sell in Canada at prices lower than the cost of production of the Canadian manufacturer apart altogether from any question of profit to the Canadian manufacturer is not accidental or temporary but is based on the extremely low cost of production of the Japanese manufacturer aided by the well disciplined character of the Japanese people and the active support of the Japanese government for manufacturing trading and shipping organizations."

THE COMMISSIONER: What does that mean? Does that mean that the Japanese Government subsidizes exportation?

MR. KELLOCK: Yes, my lord, and also directly interested in industry. I deal with that a little later on. It subsidizes industry, subsidizes shipping, and it has export cartels or guilds, as they

— in Canada at 1[illegible].

MR. FULLER: My lord, I was dealing with the foot of page 15:

"Japanese ½ inch rayon elastics were selling — in Canada [illegible] per gross yards in small quantities and for $1.00 gross yards in large quantities. The Canadian factory that at the same article without selling cost is $1.[illegible]"

Then as to the low Japanese cost of production:

"The evidence discloses that the ability of the Japanese exporter to sell in Canada at prices lower than the cost of production of the Canadian manufacturer apart altogether from any question of profit to the Canadian manufacturer is not accidental or temporary but is based on the extremely low cost of production of the Japanese manufacturer aided by the well disciplined character of the Japanese people and the active support of the Japanese government for manufacturing trading and shipping organizations."

THE COMMISSIONER: That does not mean? Does that mean that the Japanese Government subsidizes exporters?

MR. FULLER: Yes, my lord, and also directly interested in [illegible]. I don't think [illegible] latter [illegible]. It subsidizes [illegible]

are called.

"The situation is essentially a clear issue between the Japanese way of living and the western way of living which, as long as the difference exists, requires that the western standard of living be protected."

As to wages in Japan:

"the situation is disclosed by the evidence commencing at page 6370 24 to 6377 14. The evidence is based upon authoritative sources. Taking the highest figure disclosed by the evidence, the average cash wage per hour paid in the textile industry in Japan in the year 1932 was 2¢. This did not include housing. Including all allowances the wage rate per day in the textile industry in the year 1933 was 73.91¢ in the case of men and 20.78¢ in the case of women, and it is to be noted that 85% of the employees are women. The evidence also discloses that there was no indication of any increasing trend in these wages down to the end of 1935."

"The reasons for these low wages are basic. The standard of living of the Japanese textile worker is entirely different from that of the Canadian due to difference in habits of living, climate, customary food, the press of a large supply of labour and the apparent willingness of the Japanese female workers to live in dor-

are called.

"The situation is essentially a clear issue between the Japanese way of living and the western way of living which, as long as the difference exists, requires that the western standard of living be protected."

As to wages in Japan:

"The situation is disclosed by the evidence commencing at page 8570 ll to 8577 14. The evidence is some more authoritative perhaps, taking the highest figure disclosed by the evidence the average cash wage per hour paid in the textile industry in Japan in the year 1928 was 8c. This did not include housing. Including all allowances the wage rate per day in the textile industry in the year 1928 was 75.8% in the case of men and 80.7% in the case of women, and it is to be noted that 88% of the employees are women. The evidence also discloses that there was no indication of any increasing trend in those wages down to the end of 1933."

"The reasons for these low wages are basic. The standard of living of the Japanese textile worker is entirely different from that of the Canadian due to differences in modes of living, climate, customary food, the fact of a large supply of labour and the apparent willingness of the Japanese female worker to live in dor-

mitories on the premises under the control of the employer, all of which would be intolerable and undesirable for the Canadian textile worker. Japanese society is one which has just emerged or is emerging from a feudal system which has been in existence for centuries and which has made available for the recently developed industrial system of Japan an inexhaustible supply of labour familiar with a discipline imposed from above and demanding little in the way of monetary rewards or living conditions deemed essential in Western countries. So long as this basic condition continues so long will the Japanese manufacturer have a very considerable advantage in his labour costs. These labour costs are cumulative in that the Japanese textile manufacturer pays his workers these comparatively low wages. Further Japanese manufacturers or producers of machinery, power, buildings, supplies, transport, and all kinds of goods and services used by the Japanese textile manufacturer, pay similar low wages which result in low overhead costs to the manufacturer of textiles. The low prices at which the Japanese are able to sell in Canada after paying freight, insurance, packing and duties are very natural result of the low costs of labour and overhead."

"The Japan Silk Year book 1935-1936 (Exhibit 1290) page 379 has the following under the heading

"Cost of Production" - 'The most important factor determining the price of rayon fabrics is the cost of material, rayon yarn, which forms about 50% of the total cost of production. The chief reason for the comparatively low cost of production of Japanese rayon fabrics is ascribed to the cheapness of material, the wages and labour forming 11% to 23% of the total cost,' This is followed by a table analysing the cost of production of rayon fabrics. Taking a 36" plain rayon fabric which is the second fabric dealt with in the table and computing the figures in Japanese currency there given in dollars and cents, the result is as follows:"

The yarn costs 2.378¢ per --- this is all on the per yard basis.

THE COMMISSIONER: The yarn, you say?

MR. KELLOCK: Yes.

THE COMMISSIONER: You have not the word "Yarn" here.

MR. McRUER: I was wondering why the Canadian weavers do not use these Japanese rayon yarns if as good as theirs.

MR. KELLOCK: Well, you have duties for one thing.

MR. McRUER: The duty is sufficient to keep it out,- that is, a large part?

MR. KELLOCK: Well, Mr. Dixon said his cheif fear for the moment was from Japan and Italy, as I recollect his argument.

"cost of production" - "The most important factor determining the price of rayon fabrics is the cost of material, rayon yarn, which forms about 30% of the total cost of production. The chief reason for the comparatively low cost of production of Japanese rayon fabrics is ascribed to the cheapness of material, the wages and labour forming 11% to 25% of the total cost." This is followed by a table analyzing the cost of production of rayon fabrics. Taking a 36" plain rayon fabric which is the second fabric dealt with in the table, converting the figures in Japanese currency into dollars in dollars and cents, the result is as follows:"

The yarn costs 2.37% per --- this is all on the per yard basis.

THE COMMISSIONER: The yarn, you say?

Mr. KELLOCK: Yes.

THE COMMISSIONER: You have not the word "Yarn" here.

MR. MONROE: I was wondering why the Canadian weavers do not use these Japanese rayon yarns if as good as they claim.

MR. KELLOCK: Well, you have duties for one thing.

MR. MONROE: The duty is sufficient to keep it out, - that is, a large part?

MR. KELLOCK: Well, Mr. Dixon said his chief fear for the moment was from Japan and Italy, as I recollect his argument.

However, dealing with this illustration - "wages, .638¢ (taking 2.2 yen as the average), The dyeing charge is 1.088¢ and the printing charge 1.038¢. That is under the total. The total is 4.054¢ without printing, and including printing it is a little over 5¢ a yard.

"The cost of the lowest quality rayon fabric produced in Canada referred to in the evidence is approximately three times the above figure."

And that is the narrower width.

"In dealing with real silk fabrics the Japan Silk Year Book 1935- 1936 at page 509 says: 'In most of the silk fabrics produced in Japan the ages form no important part of their prices.'"

That is what the Japanese say themselves.

Then with regard to depreciation of the yen:

"A further factor in the ability of the Japanese exporter to sell at low prices is the depreciation in the yen in terms of fo reign currencies, and particularly the Canadian dollar. It is true, of course, that insofar as prices of raw materials are concerned, which the Japanese must buy in world markets, the prices of these materials have risen in terms of yen in accordance with the depreciation in the yen. But it must be remembered, as established in evidence, that so far as raw silk is concerned that Japan does not buy in a world market but in her own domestic market, and that with regard to artificial silk she is

however, dealing with this illustration - "Yen 4,
000" (taking 3.5 yen as the average). The cocoon cost
is 1,000; and the printing charge 1,000. That is
the total. The total is 4,000, without profit,
and including spinning it is a little over or a yen.
"The cost of the lowest quality Japan Tussah
produced in China reduces to 1/4 the evidence is
approximately three times the above figure."
and that is the narrower width.

"In dealing with real silk factics the
Japan Silk Year Book 1925- 1926 at page 129 says:
'In most of the silk factics produced in Japan
the cocoon form no important part of their process.'"
That is what the Japanese say themselves.

Then with regard to degumming of the yarn:

"A further factor in the reality of the
Japanese exporter to sell at low prices is the re-
gumming in the yarn in terms of to raise quantity
and particularly the Japanese dollar. It is true,
of course, that imports as 'raw' of yarn intermixing
are concerned, which the Japanese must buy in foreign
markets, the prices of these materials have
risen in terms of yen in accordance with the de-
preciation in the yen. But it must be remembered,
as established in evidence, that so far as raw
silk is concerned that Japan does not buy in a
world market but in her own domestic market, and
that with regard to manufactured silk she is

dependent upon foreign raw materials to a limited extent only. While theoretically a depreciation in a currency should result in a corresponding increase in internal prices it is not true that this has taken place in the case of Japan. Insofar as Japanese wages are concerned, the evidence is that the wages have not gone up but have remained static or have gone slightly down. The effect of this fact is a real decrease in Japanese labour costs and a resulting decreasing wage content in Japanese wage export. Japan has not had to purchase food in foreign markets at higher yen prices. The evidence shows that Japan is in fact a net exporter of food supplies . Accordingly, to the extent that Japanese export prices were not increased by reason of higher prices paid for raw materials in terms of yen, the Japanese exporter has reaped an advantage in world export markets by reason of the depreciation in the yen.

The evidence shows that the Japanese themselves recognize that the major factors in giving the Japanese exporter an advantage over foreign manufacturers are the slump in the yen, low labor costs and low standard of living.

By reason of the continuity over a period of years in the process of the depreciation in the yen the Japanese reaped an additional advantage in purchasing raw materials at an earlier

period than the exports fabricated out of the raw materials were sold, the result being that the finished merchandise obtained a higher yen price than had been paid for the raw materials by reason of the process of depreciation in the period between the date of purchase of the raw materials and the date of the sale of completed merchandise. Japanese trade has steadily increased in a marked degree during this entire period."

THE COMMISSIONER: What has been happening to the yen now, recently?

MR. KELLOCK: The last I saw, my lord, it was on its way down again. I saw a figure, something just over 28 cents was the last I saw.

THE COMMISSIONER: What is the standard value of the yen in gold cents?

MR. KELLOCK: It is 49.85.

THE COMMISSIONER: That is in gold cents?

MR. KELLOCK: Yes, my lord.

MR. HOOPER: That is the old gold content. That is the old basis of gold content.

THE COMMISSIONER: That is what I am asking, gold basis, both being in gold, Canada and the yen. What is the value?

MR. HOOPER: It was 49.85 but just the same as Italy has reduced the gold content ---

MR. KELLOCK: It has never been revalued so far as I know.

portion than the ex-cores fumigated out of one raw materials were sold, the result being that the finished merchandise obtained a higher yen price than had been paid for the raw materials by reason of the process of depreciation in the period between the date of purchase of the raw materials and the date of the sale of manufactured merchandise. (Question that was actually fumigated in a marked degree during this marine period." THE COMMISSIONER: What has been happening to the yen now, recently?

MR. MILLER: The last I saw, my lord, it was on its way down again. I saw a figure, something just over 36 cents was the last I saw.

THE COMMISSIONER: What is the standard value of the yen in gold weight

MR. [illegible]: It is 49.84.

THE COMMISSIONER: That is in gold content

MR. MILLER: Yes, my lord.

MR. HOFFER: That is the old gold content. That is the old basis of gold content.

THE COMMISSIONER: That is what I am asking, gold basis, both being in gold, Canada and the yen. What is the value?

MR. HOFFER: It was 49.84 but [illegible] [illegible] [illegible] the gold content —

MR. PARKER: If they have been translated in [illegible]

MR. HOOPER: That is only in Canadian dollars.

THE COMMISSIONER: It has been allowed to drop, that is all. To-day it is what?

MR. KELLOCK: Somewhere between 28 and 29.

THE COMMISSIONER: Of our cents?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: And it is being used for duty purposes at what?

MR. HOOPER: 35 now, my lord.

MR. KELLOCK: Your lordship mentioned the other day in connection with the evidence that your lordship had heard in connection with wheat, one of the reasons for the falling off of Canadian wheat export to Japan was the question of exchange.

THE COMMISSIONER: No, of Australia.

MR. KELLOCK: Yes. Perhaps when I come to that point I could give your lordship what the relation is between Canadian, Japanese and Australian currencies from 1930 to 1935. I have it here under a heading.

MR. McRUER: Canadian export to Japan, according to an announcement this morning in the Montreal Gazette are up 50% for the first ten months of the fiscal year, $18,000,000 for the ten months, an increase of 50%.

THE COMMISSIONER: I might say right here, the question of Japanese competition affecting our own textile industry is a very important one in this inquiry. The fear of it, you may say, was the cause of this inquiry, and it is very prominently set out

MR. HOOPER: That is only in Canadian dollars.

THE COURT REPORTER: It has been allowed to grow, that is all. To-day it is what?

MR. KILLOCK: Somewhere between 23 and 24.

THE COURT REPORTER: Of our money?

MR. KILLOCK: Yes, my lord.

THE COMMISSIONER: And it is being used for many purposes at what?

MR. HOOPER: 35 now my lord.

MR. KILLOCK: Your Lordship has evidence that in connection with the evidence that your lordship had heard in connection with wheat, one of the reasons for the falling off of Canadian wheat exports to Japan was the question of exchange.

THE COMMISSIONER: No, of materials.

MR. KILLOCK: Yes. Perhaps when I come to that point I could give your lordship what the relation is between Canadian, Japanese and American currencies from 1930 to 1935. I have it here under a heading.

MR. [illegible] of [illegible], [illegible] to an announcement this morning in the Montreal Gazette are up 30% for the first ten months of the fiscal year [illegible] for the [illegible].

THE COMMISSIONER: I might say right here, the [illegible] of Japanese competition [illegible] textile industry is a very important one in this inquiry. The fear of it, you may say, has had so

in the Order in Council, and at some time before we are through if I can be furnished with figures brought down to as late a date as possible I would very much appreciate it. The figures which were taken in evidence some months ago have now been preceded by recent events. I would like to have the proportion of the Canadian rayon markets up to as late a date as possible, say to the end of January - perhaps a little later - has been occupied by Japanese importations as compared with previous years. On the other hand, what increase, if any, has been shown, as Mr. McRuer says there, in Canadian exportation to Japan and, if so, in what products of Canada. In fact, anything that will throw light on the working of this trade arrangement, particularly affecting textiles but, of course, affecting the general situation as well, which must be taken into consideration. Anything you can gather for me I would be very pleased to have. There would be no use my writing something now on figures that go back several months, July of last year.

MR. KELLOCK: The question your lordship asked me, I say that the closing quotations on Saturday last in regard to the yen was 28.58. It appears to be slipping a little bit.

Then paragraph 48, my lord, under the heading, "Japan Produces bulk of Its Needs in Pulp and Chemicals:

"The evidence shows that Japan is dependent upon foreign supply for only a portion of the pulp

in the order in Council, and at some time before we are through if I can be furnished with figures brought down to as late a date as possible I would very much appreciate it. The figures which were seen in evidence some months ago have now been preceded by these events. I would like to have the proportion of the Canadian sugar marketed up to as late a date as possible say to the end of January - perhaps a little later - has been occupied by Japanese importations as compared with previous years. In the other hand, what tonnage if any, has been owned, on Mr. Adams' view there, in Canadian experiation to Japan and, if so, in what tonnage at most. In fact, anything that will throw light on the working of this trade arrangement, particularly affecting textiles but, of course, attracting the general situation as well, which must be borne in consideration. Anything you can gather for me I would be very pleased to have. There would be no use my writing something now on figures that go back now months, only of last year.

MR. MACDONALD: The question your honourably asked as to what was the Canadian importation or exportation in regard to the year was 48.50. It appears to be attached to this note.

Hon. Finance Minister, Mr. Lapp, under the heading "Japan Percentage Only the Canadian Exports to Japan Based Mainly the Only - Statistics of the Year

required...."

THE COMMISSIONER: That is a very vague term, "only a portion," to be of any value I should know what portion.

MR. KELLOCK: Perhaps I can give your Lordship that in connection with the other information. I think the figures are in that evidence.

THE COMMISSIONER: I know, but ---

MR. McRUER: I put in a large schedule that was prepared by Mr. Whiteley, showing the principal exports to Japan.

THE COMMISSIONER: That is not the point now. Mr. Kellock tells me, showing reasons why Japan is a competitor. The point is that Japan produced the bulk of its needs in pulp and chemicals, but does not say how much. "The evidence shows that Japan is dependent upon foreign supply for only a portion--- "

MR. KELLOCK: I will put that in better shape for your lordship.

THE COMMISSIONER: Yes, if it is to be of any value it should be more definite.

MR. KELLOCK: The same applies to the next paragraph dealing with heavy chemicals.

Aside from the dependence on foreign supplies:

"Exhibit 395 shows that in the case....."

At the foot of page 18, and at the top of page 19:

"....shows that in the case of Japan, pulp and chemicals constitute 50% of the cost of

[illegible]...."

THE COMMISSIONER: That is a very vague term, "well, a portion," so be of any value I should know what [illegible].

MR. KELLOGG: Perhaps I can give your Lordship that in connection with the other information. I think the figures are in that evidence.

[illegible] I know, but ---

MR. MONTGOMERY: I put in a large schedule that was prepared by Mr. Whiteley, showing the principal exports to Japan.

THE COMMISSIONER: That is not the point now. Mr. Wallock tells us, showing reasons why Japan is a competitor. The point is that Japan produced the bulk of its needs in pulp and chemicals, but does not say how much. "The evidence shows that Japan is dependent upon foreign supply for only a portion---"

MR. KELLOGG: I will put that in better shape for [illegible].

THE COMMISSIONER: Yes, if it is to be of any value it should be more definite.

MR. KELLOGG: The same applies to the next para- [illegible] dealing with heavy chemicals.

[illegible] from the [illegible] [illegible]

"Exhibit 325 shows that in the case....."

At the foot of page 18, and at the top of page 19:

"....shows that in the case of Japan, pulp and [illegible]

production of rayon yarn, while in the case of the United States the figure is 32% and that of Great Britain 36%."

It is simply the relation of wages to material.

"This table is based on a report of the Japan Cellulose Industry Reporters Limited, a Japanese organization, and has copied by the Textile Organon. The absolute accuracy in cents of the various items entering into the cost of rayon yarn is doubted by the Organon but the relatively proportion to the whole cost of these items, in the case of Japan at least, is confirmed by the letter obtained by Counsel for the Commission from the Canadian Trade Legation at Tokio. That the Japanese can produce rayon yarn at one-third of the British and American price and rayon piece goods at even greater advantage was stated by Japanese speakers before the Japan-Australia Trade Discussion Council of Osaka."

And dealing with Japanese taxation and its export Guilds.

"The Japanese manufacturer enjoys taxation privileges not enjoyed by the Canadian manufacturer which put the latter at a further disadvantage. This is due to the paternalistic attitude of the Japanese Government toward industry which is fostered not only by exemption from the heavy taxation which applies to the agricultural community, but by the creation of trade associations with wide powers of

production of rayon yarn, while in the case of the United States the figure is 3% and that of Great Britain 2%.

It is clearly the ambition of Japan to intervene. This table is based on a report of the Japan Cotton Textile Industry Research Institute, a Japanese organization, and was copied by the textile organs. The absolute accuracy in regard to the various items entering into the cost of rayon yarn is doubted by the Japanese but theoretically proportion to the whole cost of these items, in the case of Japan at least, is confirmed by the letter obtained by Consul Ito the Commission from the Japanese Trade Commission at Tokio. That the Japanese can produce rayon yarn at one-third of the British cost [illegible] appears before the Japan-Australia Trade Commission of Japan."

Dealing with Japanese taxation and the secret tariff

"The Japanese manufacturer enjoys taxation privileges not enjoyed by the Australian manufacturer which put the latter at a further disadvantage.

[illegible]

controlling manufactures and exports. These associations again are exempt from certain taxation and are also subsidized by the Government directly. In addition they receive Government loans at low rates of interest. The exports of Japan are handled directly by these trade associations, all exports ~~of~~ to Canada being handled by six of them."

That is an important element, my lord, the export is not indiscriminate but it is controlled.

"In this connection Exhibit 668 states that 'The cartels and trusts of Japan govern the output marketing and prices of virtually every industry, business, art and craft - large, medium, small and cottage. In this regard the Japanese have attained to the German level of thoroughness and perfection. This kind of business organization has contributed enormously to the economies in production, advertising, forwarding and distribution.

In order to cater to the markets of foreign countries and control the supply and prices of the goods destined for the markets abroad 'export associations' have been brought into being as special organizations by the Act of 1930. Today they are some ninety in number.'"

They have a statutory basis.

"The steamship lines themselves which carry these exports are also subsidized by the Government, the result being that not only is the

controlling manufactures and exports. These associations which are formed from small manufacturers and are also subsidized by the Government directly. In addition they receive Government loans at low rates of interest. The exports of Japan are handled directly by large foreign establishments, all exports are to China being handled by six of them."

That is an important element, my lord, the export is not indiscriminate but it is controlled.

"In this connection Exhibit 66 states that 'the cartels and trusts of Japan govern the output marketing and prices of virtually every industry, business, art and craft - large, medium, small and cottage. In this regard the Japanese have attained to the German level of thoroughness and perfection. This kind of business organization has contributed enormously to the economics in production, distribution, transportation and financing.'

In order to assist to the business of foreign countries and control the supply and prices of the goods destined for the markets around 'export associations' have been brought into being as governmental organizations by the act of 1930. Many of them are now closely in touch with the Ministry of Commerce and Industry.

The Ministry also encourages with many export associations are also subsidized by the

Japanese manufacturer able to produce at very low cost by reason of all the factors previously discussed but is able to lay down his products in foreign countries, including Canada, without having to pay full freight charges. By reason of the Government subsidies to the trade associations and to the steamship lines not only can the Canadian manufacturer not hope to compete with the low cost of production in Japan but he cannot compete where this low cost of production is further aided by reason of these subsidies. The subsidization of the steamship lines results further in a lowering of the costs of any raw materials the Japanese manufacturer has to buy in foreign markets. In addition to the subsidization of the trade associations and to the loaning of Government money at low rates of interest, the Government itself is a heavy investor in industries."

"The rapid and phenomenal expansion in Japanese productive capacity, and in particular of rayon and coton, has created a pressure in developing outlets for these products. The trade associations with their wide powers of controlling production and handling exports have been able, notwithstanding the decrease in prices which has followed the increase in productive capacity, to maintain

[illegible] as proved by the low cost of all the factors previously discussed but is able to lay down his products in Vancouver, including freight, without having to pay full freight charges. By reason of the government subsidies to the trade associations and to the steamship lines not only can the Canadian manufacturer not hope to compete with the low cost of production in Japan but he can not compete where this low cost of production is further aided by reason of these subsidies. The subsidization of the steamship lines results further in a lowering of the costs of any raw materials the Japanese manufacturer has to buy in foreign markets. In addition to the subsidization of the trade associations and to the [illegible] the Government [illegible] in a [illegible] industries."

"The rapid and phenomenal expansion in Japanese productive capacity, and in particular of rayon and cotton, has created a pressure in developing outlets for these products. The trade [illegible] and [illegible] exports have been [illegible] the decrease in prices which has [illegible]

the various rayon companies in a strong position and to maintain substantial profits by organizing curtailment of production."

Then the next is heading dealing with "Experience of Other Countries with Japanese Textile Imports," and I submit that the value of this is in what these countries have found and what they were obliged to do in view of the fact that we have gone the other way recently, we have lowered very very substantially our duties against Japanese imports.

"Japan is probably the largest operator in the world in textiles. It is the largest exporter of cotton piece goods. It is also the second largest, if not the largest, prducer of rayons, and it is a very large producer and exporter of wool piece goods. In addition the vast majority of the raw silk produced in the world is produced in Japan, and Japan is also the largest exporter of real silk piece goods. This position attained by Japan in production has been attained in a comparatively few years and in the same period Japan has penetrated effectively most of the foreign markets of the world, resulting in great disturbance to the domestic economies of such foreign countries, which has forced many countries to adopt measures which has forced many countries to adopt measures to restrain the flooding of its markets and the consequent

the various rayon companies in a strong position and to maintain substantial profits by stimulating curtailment of production."

Then the next is heading dealing with "exportunes of other Countries with Japanese Textile Imports," and I submit that the value of this is in what these countries have found and what they were obliged to do in view of the fact that we have gone the other way recently, we have lowered very very substantially our values and tariffs.

"Japan is presently the largest exporter in the world in textiles. It is the largest exporter of cotton piece goods. It is also the second largest, if not the largest, producer of rayons, and it is a very large producer and exporter of wool piece goods. In addition the vast majority of the raw silk produced in the world is produced in Japan, and Japan is also the largest exporter of real silk piece goods. This position attained by Japan in production has been attained in a comparatively few years and in the same period Japan has penetrated effectively most of the foreign markets of the world, resulting in great disturbance to the domestic economies of such foreign countries, which have forced many countries to adopt measures which are [illegible] by quotas, increased tariffs, exchange controls, import licenses and the [illegible]

dislocation of its domestic industry with resulting unemployment. Not only have the domestic markets of these countries been affected but such great manufacturing and exporting countries as Great Britain and the United States have had their entire trade relations with other countries disrupted and have lost a substantial part of the world's markets which they formerly enjoyed."

And I refer to the evidence where that is substantiated:

"The extent to which Japanese importations had captured the markets of 51 British Crown Colonies had become so alarming by 1933 that the British Government entered into negotiations with the Japanese Government for the purpose of bringing about some agreement which would meet the situation. A year's negotiation failed to produce any results whatsoever and accordingly the British Government in May 1934 decided that only the imposition of quotas would be an effective remedy."

And your lordship will see how popular that method becomes throughout the world.

"Accordingly,---"

THE COMMISSIONER: Is not the world trying to get away from that again?

MR. KELLOCK: I do not know of any.

THE COMMISSIONER: I thought, accompanying the tripartite currency agreement recently between the

dislocation of its domestic industry with resulting unemployment. Not only have the domestic industries of these countries been ruined but even great manufacturing and exporting countries as Great Britain and the United States have had their entire trade relations with these countries disrupted and have lost a substantial part of the world's markets which they formerly enjoyed."

And I refer to the evidence more that is substantiate "The extent to which Japanese importations had captured the markets of all British Crown Colonies had become so alarming by 1934 that the British Government entered into negotiations with the Japanese Government for the purpose of bringing about some agreement which would meet the situati A year's negotiation failed to produce any results in May 1934 decided that only the imposition of quotas would be an effective remedy."

becomes throughout the world.

"Accord ugly,---"

THE CHAIRMAN: Is not the world trying to get into that boat?

MR. COLLINS: I am just here now.

MR. CHAIRMAN: I thought, perhaps, you

United States, Great Britain and France was a movement towards the abolition or the curtailment of quota arrangements, lowering of tariffs, etc. Are you going to argue here that the quota should be imposed?

MR. KELLOCK: I am only speaking in regard to Japan.

THE COMMISSIONER: I know.

MR. KELLOCK: I don't know that I am going that far but I am pointing out to your lordship that these other countries have apparently decided that that is the only effective way for them to avoid being flooded. Now, whether it can be said that that is the only method or not I am not prepared to say. My submission is fixed values, which bring the values of foreign goods more to a parity with the cost of producing the same goods here - might be just as good and just as fair to domestic industry.

THE COMMISSIONER: Of course, you see in the instance of these Crown Colonies there was no home industry there to look after, was there?

MR. KELLOCK: I don't think so.

THE COMMISSIONER: Just the question of the two outside competitors, one Great Britain and the other Japan, and Great Britain had the law-making power in the Crown Colonies and imposed quotas there. However, go on.

MR. KELLOCK: That is quite true but that is what they did and they are still in effect, my lord, and so far as the withdrawal of that method from any of

valid. Then, Sir, Canada was a Dominion to arrange the abolition or the curtailment of these arrangements, lowering of tariffs, etc. Are you going to argue here that the duties should be imposed?

MR. GILLOOR: I am only speaking in reply to Japan.

THE COMMISSIONER: I know.

MR. GILLOOR: I don't know what I am going that for but I am pointing out to your lordship that these other countries have apparently decided that that is the only effective way for them to avoid being flooded.

Now, whatever it can be said that that is the only method or not I am not prepared to say. My conclusion is fixed values, which bring the values of foreign goods more to a parity with the cost of producing the same goods here - might be just as good and just as fair to domestic industry.

THE COMMISSIONER: Of course, you see in the instance of these Crown Colonies there was no home industry there to look after, was there?

MR. GILLOOR: I don't think so.

THE COMMISSIONER: Just the question of the two outside competitors, one Great Britain and the other Japan, and Great Britain had the law-making power in the Crown Colonies and imposed duties there. However, go on.

MR. GILLOOR: That is quite true but that is what they did and they certainly in Africa, by local, and

these countries that imposed them as against Japan I personally at the moment do not recall any evidence, any outside knowledge of that.

MR. McAUBEY: Did not Australia just do that thing?

THE COMMISSIONER: Yes, something done in Australia.

MR. KELLOCK: Yes, but it still involves the quota idea, my lord.

THE COMMISSIONER: The quotas have been loosened.

MR. KELLOCK: In amounts?

THE COMMISSIONER: Yes.

MR. KELLOCK: "Accordingly, quotas were imposed in these 51 Colonies during 1935, and evidence 6171 l. 13 to 6179 (a) l. 20). The preponderant position of Japan in trade with these Colonies is typified by the share of the imports shown in two cases where for treaty reasons no quotas were possible, namely, Sudan and Tanganyika. It is submitted that the adoption of the quota system is significant, the view of the Government apparently being that even high duties would be ineffective. This is undoubtedly because of the excessively low prices at which the Japanese were marketing their products in the markets of the world. Even a high duty on a low price does not mean very much."

-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

these countries that imposed them as against Japan. I personally at the moment do not recall any evidence, any outside knowledge of that.

MR. MACKAY: Did not Australia just do that thing? [illegible] Yes, [illegible] [illegible] Yes, we do still [illegible] the [illegible] law, my lord.

THE COMMISSIONER: The goods have been imported.

MR. MILLER: In amounts?

[illegible] yes.

MR. KELLOR: Accordingly, goods were imported in these 21 colonies during 1938, and evidence will I. 18 to 21VP (a) 1, 20). The preponderant position of Japan in trade with these colonies is typified by the share of the imports shown in two cases where for treaty reasons no quotas were possible, namely, Sudan and Tanganyika. It is submitted that the conception of the quota system is significant, the view of the Government apparently being that even high duties would be ineffective. This is unquestionably because of the exceptionally low prices at which the Japanese were marketing their products in the markets of the world. Even a high duty on a low priced article [illegible] [illegible].

[illegible]

-- The committee resumed at 2.30 o'clock.

Mr. KELLOCK: My Lord, I was at paragraph 55 at the foot of page 21, Section G. I continue:

"In the case of Japanese trade with Australia, Japan and Australia in 1935-36 appeared to have been dissatisfied with the state of the trade. Japan's view was that the trade balance between the two countries measured in money was too one-sided, the ratio being three to one, or even four to one against Japan. On the other hand, Australia had absorbed increases in imports of Japanese cotton and rayon textiles to such an extent that Australian trade with Great Britain had been seriously disrupted. Imports of rayons from Great Britain in 1935 were less than 10 per cent of those from Japan and Australian imports of British cotton goods had decreased while imports of cotton goods from Japan had increased. This had occurred during a time in which there was a substantial margin of duty preference in favour of Great Britain. Negotiations followed which, after some time, led to a decision on the part of the Australian government that very substantial increases in duty rates on Japanese textiles should be instituted and at the same time decreases made on duty rates against British textiles. Provision was also made for an import license system under which imports from countries under intermediate or general tariffs could be prohibited or controlled. Japan is under the Australian general tariff. Under the new duties grey cotton cloth from Japan was increased from .86d to 2.75d per square yard while on rayon

the committee resumed at 2.30 o'clock.

Mr. MACKAY: My lord, I was at paragraph 55 at the foot of page 81, section 6. I continue:

"In the case of Japanese trade with Australia, Japan was relatively in 1934-35 supposed to have been disadvantaged with the state of the trade. Japan's view was that the trade balance between the two countries measured in money was too one-sided, the ratio being three to one, or even four to one against Japan. On the other hand, Australia had absorbed increases in imports of Japanese cotton and rayon textiles to such an extent that Australian trade with Great Britain had been seriously disrupted. Imports of Japanese goods into Great Britain were less than 10 per cent of those from China and Australian imports of British cotton goods had decreased while imports of raw cotton from China had increased. This had occurred during a time in which there was a considerable margin of trade preference in favour of Great Britain. Negotiations followed which, after some time, led to a decision on the part of the Australian Government that very substantial increases in duty rates on Japanese textiles should be instituted and at the same time discussions took place on duty rates against British textiles. Provision was also made for an import licence system which would ensure that Japanese goods would not be imported in quantities greater than a certain percentage of the total quantity of similar goods imported from all countries during a specified period.

"fabrics the increase was from 2.68d per square yard to 9d per square yard (Exhibit 408). The licensing syste m permits the Australian government by withholding licenses to exclude imports.

These provisions were enacted in 1936 while this commission was sitting and all the information then obtainable was placed before the commission."

The COMMISSIONER: Can you tell me whether this state of affairs still exists between Japan and Australia ?

Mr. McRUER: According to the London Times it has been changed; I read an article in the Times to that effect.

The COMMISSIONER: That is a question that can be looked into.

Mr. KELLOCK: I can get that accurately for Your Lordship.

The COMMISSIONER: I have asked the secretary to look into it.

Mr. KELLOCK: The brief goes on:

"Your Lordship may deem it desirable to inquire as to what use the Australian government has found it necessary to make of the licensing system. I have been instructed that at the present time, namely, December, 1936, the licensing system is invoked by the Australian government to the extent of refusing import licenses and thus prohibiting Japanese imports of rayon and cotton piece godds. The Australian situation is dealt with in evidence 6179 (a) 21 to 6181 l. 3, 6311 l. 8 to 6313 l. 24, and Exhibits 360-364 (inclusive) and 408."

That situation was a sort of war that preceded the new arrangementn, which apparently has been effected

The COMMISSIONER: With regard to the figures I had of importations of about 65,000,000 yards and 13,000,000 pounds of Japanese rayon into Australia, what year was that ? Were they not for 1936 ?

Mr. KELLOCK: They were for 1935, My Lord. However, I will get that information for Your Lordship.

"In the case of Egypt, a similar situation resulted with regard to imports of Japanese rayons and cotton piece goods, resulting in protracted negotiations, and ultimately in the enactment in 1936 of new and higher duties against these imports. The situation is shown in the evidence at page 6181, 9 to 6184 30. The increases range from 200 per cent to 700 per cent, in addition to which Japanese imports pay a 40 per cent currency surtax. See also Exhibits 365 to 367 inclusive. It is interesting to note, as shown by Exhibit 366, that during the course of negotiations, when the imposition of quotas against Japanese imports was being discussed, a suggestion was made on behalf of the Japanese government, that the quota of Japanese cotton piece goods be determined by the value of Egyptian raw cotton purchased by Japan during the year. This suggestion was rejected on the ground that money as a measure of the trade between Japan and Egypt was unsatisfactory because of the excessively low prices at which Japanese goods were being exported.

The same story is repeated in the case of British India. Since 1904 there had been in force a trade agreement between Japan and British India which was terminated by action of the

The COMMISSIONER: With regard to the figures I had of importations of about 60,000,000 yards and 18,000,000 pounds of Japanese raw silk respectively, what year was that? Were they not for 1936?

Mr. KELLOCK: They were for 1938, My Lord. However, I will get that information for Your Lordship.

"In the case of Egypt, a similar situation resulted with regard to imports of Japanese cotton and spun rayon goods, resulting in protracted negotiations, and ultimately in the agreement in 1938 of Egypt and Egypt entire against these imports. The situation is shown in the evidence at page 6181, 9 to 6184 30. The increases range from 200 per cent to 700 per cent, in addition to which Japanese imports by a 30 per cent duty increase. See also Exhibits 366 to 367 inclusive. It is interesting to note, as shown by Exhibit 366, that during the course of negotiations, when the imposition of quotas against Japanese imports was being discussed, a suggestion was made on behalf of the Japanese government, that the import of Japanese cotton piece goods be determined by the value of imposition the entire manufacture by Egypt during the year. This suggestion was rejected by the Egyptian Delegation, and the Japanese Delegation had to accept the quota.

The same story is repeated in the case of British India. Since 1934 there had been in force a tariff on Japanese rayon goods, and British India was threatened by Japan with a tariff on Indian goods.

"government of British India in the year 1933. In March and also in June of that same year duties were imposed against Japanese imports of
4 rayon and cotton piece goods which were termed
5 in the evidence as prohibitive but which turned out to be ineffective, as the Japanese imports did not decline, but rather increased to a very great extent. Exhibit 368 shows the history of imports of cotton and rayon piece goods into British India from Japan and Great Britain.
10 This is a graphic story of the supremacy obtained by the Japanese exporters in a period of ten years in spite of a substantial tariff preference in favour of Great Britain during that period.

After some negotiation the government of
15 British India enacted a new tariff law in January of 1934 confirming a barter arrangement between British India and Japan which virtually established not only higher duties but a quota arrangement with regard to imports from Japan of cotton and rayon piece goods. This arrangement was apparent-
20 ly very distasteful to Japanese exporters, and their agreement was only obtained after it had been pointed out to them that hostile economic measures against Japanese goods were under con-
4 sideration or enactment in some thirty countries
25 of the world. (See evidence 6185 1 1 to 6194 1 2 and exhibits 368-371 inclusive).

With regard to the United States, Exhibit 373 shows the imports of cotton piece goods into the United States from 1925 to 1935 both as to
30 total imports and also as to imports from Japan. This table presents another striking picture of

government of British India in the year 1932.

In March and also in June of that same year duties were imposed against Japanese imports of rayon and cotton piece goods which were termed in the evidence as prohibitive but which turned out to be ineffective, as the Japanese imports did not decline, but rather increased to a very great extent. Exhibit 555 shows the history of imports of cotton and rayon piece goods into British India from Japan and Great Britain.

This is a graphic story of the supremacy obtained by the Japanese exporters in a period of ten years in spite of a substantial tariff preference in favour of Great Britain during that period.

After some negotiation the government of British India enacted a new tariff law in August of 1934 confirming a better arrangement between British India and Japan which virtually established not only higher duties but a quota arrangement with regard to imports from Japan of cotton and rayon piece goods. This arrangement was apparently very distasteful to Japanese exporters, and [illegible] Japanese exporters also in the [illegible] against exporters goods were under consideration or consignment in some thirty countries of the world. (See [illegible] 2 and exhibits 555-1A1 inclusive).

With regard to the United States, Exhibit [illegible] shows the imports from Japan [illegible] the United States from [illegible] to Japan [illegible] Exhibit [illegible] shows the imports of cotton and rayon piece goods into the United States from Japan and Great Britain.

"the rapid acceleration in the penetration of the United States market by the Japanese exporter. In 1925 the Japanese supplied 5 per cent of the imports of cotton piece goods. This percentage jumped by 1935 to 58 per cent. This growth was in the face of the shrinkage in total imports of cotton piece goods into the United States from 109.25 million yards in 1925 to 63.67 million yards in 1935 (evidence 6196 l. 12 to 6197 l. 18).

In 1935 the imports from Japan of cotton piece goods was only half of one per cent of the United States market. Nevertheless the rate of growth in these importations was sufficiently alarming to result in governmental interference but not until the industry had become thoroughly aroused and other means had been tried and found wanting in dealing with the situation."

These other means I deal with immediately.

"On the 21st December, 1935, announcement was made by the United States Department of State of a gentleman's agreement with Japan in connection with which the Japanese ambassador to the United States advised the United States government that the Japanese government had authorized him to say that Japanese manufacturers and exporters of cotton textiles had decided voluntarily to restrict their exports to the United States and that this was already in force. The ambassador went on further to say that in view of the assurance of the Japanese exporters that they would continue to hold shipments to moderate levels there was little likelihood of a repetition of such abnormal increases in imports of cotton textiles

"into the United States as x occurred during the first six months of 1935.

This gentleman's agreement was immediately followed by further large increases in imports of Japanese cotton piece goods into the United States. The United States imports of Japanese cotton cloth in January, 1936, more than doubled as compared with December, 1935. In January the importations were 6,815,386 square yards compared with 2,491,525 square yards in December 1935 (evidence 6205 7 to 6206 17). In the meantime an investigation by officials of the United States tariff commission was proceeding and on the 21st of May, 1936, the president announced that the negotiations with Japan for a satisfactory gentleman's agreement with respect to cotton textile imports from Japan to this country had completely broken down. At the same time he put into effect an increase in duties on the type of cotton textiles being imported from Japan of approximately 42 per cent. (Evidence 6207 l. 14 to 6210 l. 30)."

The COMMISSIONER: It was about the same time as the duty on rayon was put down ?

Mr. KELLOCK: That was not simply an arrangement as between Japan and the United States; it followed by reason of a treaty with France.

Mr. McRUER: Those cotton duties are now still lower than the Canadian duties ?

Mr. KELLOCK:

"Prior to the putting into force of these increased duties an investigation had taken place as to the comparative costs of production of certain textiles, including cotton piece goods in

"the United States and Japan. In addition to raising the duties on cotton piece goods the president also raised the duties on wool knit gloves and mittens valued at not more than $1.75 per dozen paid from 40 cents per pound and 35 per cent ad valorem based on Japanese selling prices to these same rates but based on the selling prices of similar domestic articles. In 1935 the domestic production in the United States of wool knit golves and mittens amounted to 715,000 dozen pair which was about the same as the production in 1934. Imports however had increased from 63,000 dozen pair in 1934 to 527,000 dozen pair in 1935, of which in 1935 95 per cent came from Japan."

Mr. McRUER: In other words, their hands would have frozen if it had not been for Japan.

Mr. KELLOCK: I suppose the domestic industry would have risen to the occasion.

The COMMISSIONER: Mr. Whiteley has handed me a clipping from the Montreal Gazette of January 1937. It is dated January 22nd and reads:

Japanese will curtail cotton exports to U.S.

Osaka, Japan, January 21--(AP)--Domei (Japanese News Agency) reported to-day a tentative agreement had been reached between Japan and United States textile delegations whereby the Japanese voluntarily agreed to limit all cotton exports in the next two years except betchin, a type of cotton piece goods.

Also excepted were those exports already contracted.

"the United States and Japan. In addition to raising the duties on cotton piece goods the president also raised the duties on wool knit gloves and mittens valued at not more than $1.75 per dozen pair from 40 cents per pound and 35 per cent ad valorem based on Japanese selling prices to 50 cent duty and based on the well-known system of wholesale prices. In the case of wool knit gloves and mittens accounted to the production in 1931. Imports however had increased from 67,000 dozen pair in 1926 to 327,000 dozen pair in 1930, of which in 1929 35 per cent came from Japan."

Mr. [illegible]: Is there any other book which have frozen if it had not been for Japan.

Mr. [illegible]: I suppose the domestic industry would [illegible] as the examples.

The Chairman: Mr. Whitsey has handed me a clipping from the Portland Oregonian of January 1927. It is dated January 22nd reads:

"[illegible]

Osaka, Japan, January 21--(AP)--Local [illegible] manufacturers have been [illegible] between Japan and United States [illegible] negotiations recently was [illegible] tentatively agreed to limit all cotton textile to the most favored nation [illegible] tariff rates [illegible].

The [illegible] may [illegible] [illegible]."

"Japanese exports in 1937 and 1938 were limited to 255,000,000 square yards and provided shipments this year were not to exceed 180,000,000 square yards."

Mr. KELLOCK: Does Your Lordship understand that 250,000,000 to cover both years ?

The COMMISSIONER: I am just wondering. It is 150,000,000 this year. Probably it means both years, judging by the way it is put there.

Mr. KELLOCK: In this connection, My Lord, I should like to read an item taken from the New York Daily News Record of February 19, 1937. It is as follows:

"The Official Full Text of the "Memorandum of Understanding' reached at Osaka on Jan. 22 between the American Mission and Representatives of the Japanese Cotton Textile Industry, made public to-day by Dr. Murchison, is as follows:

MEMORANDUM OF UNDERSTANDING

The American textile mission and the representatives of the Japanese cotton textile industry understand the following to be a correct statement of the principles and procedures mutually approved by them in their conferences of Jan. 15 to 22, 1937, inclusive:

A. - PIECE GOODS

1. - The Japanese representatives accept quota limitations as the most practicable means of arriving at a satisfactory arrangement with respect to their textile exports to continental United States.

2. - On cotton piece goods, a quantity limitation shall at once be made applicable as

"Japanese exports in 1937 and 1938 were limited to 2[illegible],000,000 square yards and provisional shipments this year were not to exceed 150,000,000 square yards."

Mr. [illegible]: Does that literally mean that 280,000,000 to cover both years?

The COMMISSIONER: I am just wondering. It is 150,000,000 this year. Probably it means both years, judging by the way it is put there.

Mr. RAMSOM: In this connection, my lord, I should like to read an item taken from the New York Daily News record of February 19, 1937. It is as follows:

"The official full text of the "Memorandum of Understanding" reached at Osaka on Jan. 22 between the American Mission and Representatives of the Japanese Cotton Textile Industry, made public to-day by Dr. Morishima, is as follows:

[illegible]

The American textile labels and the representatives of the Japanese cotton textile industry understand the following to be a correct statement of the principles and procedures mutually approved by them in their conferences of Jan. 19 to 22, 1937, inclusive:

1. - [illegible]

2. - The Japanese Co-operatives agree [illegible] limitations on the exact quantities [illegible] of activities in a satisfactory arrangement with respect to their textile exports to North American [illegible] United States.

3. - [illegible] (a monthly) limitation shall be made by [illegible] on

"of Jan. 1, 1937." The basic quota applicable to the years 1937 and 1938 are as follows:

For the year 1937, the basic quota shall be 155 million square yards, or the volume of the contracts on hand on Jan. 21, 1937, for the Japanese piece goods for shipment to the United States in 1937, whichever amount is the smaller.

For the year 1938, the basic quota shall be 100 million square yards subject to the following proviso: The Japanese industry is privileged to transfer not more than one-fourth (25 million square yards) of the 1938 apportionment to the 1937 quota, but the 1938 shipments must be diminished below the basic quota by such amount as the 1937 shipments are increased above the latter's basic quota.

This agreement may be expressed as follows: The quotas agreed upon for the two-year period constitute a maximum of 255 million square yards. Of this amount the 1937 apportionment shall not exceed 180 million square yards, or be less than 155 million square yards or the volume of orders on hand on Jan.21, 1937, for shipment to the United States in 1937, whichever is the smaller figure.

3. - In the measurements requisite to the enforcement of these quota arrangements, the official data of export shipments as compiled by the Japanese government shall be used. The procedure followed shall be similar to that used in the administration of the quota arrangement on cotton rugs now in effect between the two governments.

"of Jan. 1, 1927". The basic quota applicable to the period July 1st 1926 are as follows:

For the year 1927, the basic quota shall be 150 million square yards, or the volume of the contracts on hand on Jan. 31, 1927, for the Japanese piece goods for shipment to the United States in 1927, whichever amount is the smaller.

For the year 1928, the basic quota shall be 167 million square yards subject to the following proviso: The Japanese industry is privileged to transfer out more than one-fourth (25 million square yards) of the 1928 allotment to the 1927 quota, but the 1928 allotment must be diminished below the basic quota by such amount as the 1927 allotment was increased, thus the indirectly basic quota.

The quotas agreed upon for the two-year period constitute a maximum of 325 million square yards. Of this amount the 1927 apportionment shall not exceed 150 million square yards, or be less than the actual amount shipped on the basis of orders on hand on Jan. 31, 1927, for shipment to the United States in 1927, whichever is the smaller amount.

3. - In the measurements regulating to the enforcement of these quota arrangements, the statistics of textile goods as employed by the Japanese government shall be used. The procedure followed shall be similar to that used in the administration of the quota arrangement on cotton goods now in effect between the two governments.

"The entire responsibility for the attainment of the objectives sought in this quota arrangement shall be lodged with the Japanese industry or its authorized agencies, and the obligation to accomplish these objectives is regarded by the American industry as predicated on considerations of good faith rather than on those of contractual and technical character

4. - For the purpose of satisfying these quota arrangements, cotton piece goods shall be regarded as inclusive of all woven piece goods, the principal material of which is cotton.

5. - The arrangements above provided for shall not in any way include existing agreements on cotton goods between the two industries or between the two governments.

6. - Should the trans-shipments of goods of Japanese origin from third countries to the United States tend to render ineffectual the purposes of these quota arrangements, the Japanese industry agrees to subtract the amount of such trans-shipments as compiled by the United States Customs Service from the volume of direct shipments from Japan to the United States. The American commission will undertake to reduce the volume of trans-shipments in two ways:

(1) To transmit to the Japanese industry monthly the amount of such trans-shipments, together with the names of the importers and exporters involved, and the ports of trans-shipment

(2) by undertaking to secure the cooperation of the Association of Cotton Textile Merchants

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"The entire responsibility for the attainment of the objectives sought in this protocol-agreement shall be lodged with the Japanese industry or its authorized agencies, and the obligation to maintain these objectives is regarded by the Indian industry as predicated on considerations of good faith without the fear of arbitrary and unwelcome measures.

4. - For the purpose of satisfying these quota arrangements, cotton piece goods shall be regarded as inclusive of all cotton piece goods, the principal material of which is cotton.

5. - The arrangements above provided for shall not in any way include existing agreements on cotton goods between the two industries or between the two governments.

6. - Should the trans-shipments of goods of Japanese origin from third countries to the Indian states tend to render ineffectual the purposes of these quota arrangements, the Japanese industry agrees to informal the manual of such trans-shipments as compiled by the United States Tariff Service from the volume of direct shipments from Japan to the United States. The consulting committee will determine the manual and volume of trans-shipments (in the below).

(1) A Treaty in the Japanese industry

together with the names of the importers and exporters involved, and the ports of trans-shipment.

(4) By prohibiting the sections the Government of the Association of Cotton Textile Industry

"of New York, as well as similar associations in other cities, in preventing their members from purchasing textile goods shipments originating in Japan which are not imported directly from Japan.

7. - For the purposes of the calculations on piece goods, any quantities which have been imported into the United States and then re-exported shall be excluded.

B. - JOINT COMMITTEE

1. - The two industries will undertake to establish as soon as practicable and not later than April 1, 1937, a joint committee consisting of an equal number of representatives of each industry. The purposes of this joint committee shall be to deal with whatever administrative difficulties may arise in connection with existing quota arrangements and also to act as a negotiating committee in the establishment of subsequent arrangements between the two industries relative to quantity limitations or other means of control.

C. - MISCELLANEOUS SPECIALTIES and other products for consumption made of cotton

1. - The Japanese accept the principle of quota limitation as regards table cloths, bedspreads, handkerchiefs, cotton gloves, underwear and other specialty items manufactured from cotton cloth, and yarns or thread.

2. - They will undertake to institute negotiations in line with the above principle through the joint committee as above provided for or through the agencies of the two governments, whichever may be agreed upon as more practicable.

"3. - It is agreed that after the formation of the joint committee every effort consistent with good faith and with a mutual desire for a solution of the trade problems of the twoindustries will be made to effect appropriate quota arrangements relative to the above classifications prior to June 30, 1937, or as soon thereafter as is practicable.

D. - The representatives of the American industry regard the application of the above principles and procedures to the textile trade of the two countries as rendering unnecessary any action on the part of the U. S. government looking toward further restriction of Japanese cotton-textile imports. They also consider that the application of these measures will serve to lay the ground-work for a reciprocal trade treaty between the governments of the two countries and thus make possible tariff adjustments which will be of mutual advantage to the two countries.

E. - This arrangement shall be regarded as being in immediate effect, but subject to repudiation by the Japanese industry by cablegram from Japan on or before Feb. 15, 1937.

Claudius T. Murchison, For the committee, representing the Cotton-Textile Institute, American Cotton Manufacturers' Association, National Association of Cotton Manufacturers.

3. - It is agreed that after the formation of the joint committee every effort should be made with good faith and with a common desire for a solution of the trade problems of the two Dominions will be made to effect a satisfactory trade arrangement relative to the above classifications prior to June 30, 1937, or as soon thereafter as is practicable.

4. - The representatives of the Canadian Delegation regard the application of the above principles and procedures to the textile trade of the two countries as requiring unnecessary action on the part of the U. S. government looking toward further restriction of Japanese cotton-textile imports. They also consider the application of these procedures will serve to lay the groundwork for a permanent trade agreement through the improvement of the Japanese trade and thus make possible further reductions which will be of mutual advantage to the two countries.

5. - This arrangement will be regarded as being in immediate effect, but subject to modification by the Japanese Ministry by exchange from Japan on or before Feb. 15, 1937.

Appendix I. [illegible]

[illegible]

[illegible] i [illegible] of [illegible]

"O. Shoji, for the committee, representing the Japan Cotton Spinner's Association, the Nippon Union of Cotton Textile Manufacturers' Associations, the Cotton Yarn and Cloth Exporters' Union, the Japan Cotton Yarn and Piece Goods Exporters' Association for America, the Japan Cotton Merchants Union.

OSAKA, Jan. 22, 1937.

The COMMISSIONER: Who is Mr. Murchison ?

Mr. KELLOCK: He is the president of the Cotton Textile Institute of America.

The COMMISSIONER: Does what you have read there apply to cottons ?

Mr. KELLOCK: Cotton piece goods.

The COMMISSIONER: If you deal with it on the per capita basis it would mean an importation of 12 million square yards into Canada in 1937. I am referring to the first part of the document.

Mr. KELLOCK: Yes, on a per capita basis. I am submitting it.

The COMMISSIONER: That will be marked Exhibit 1339.

EXHIBIT 1339: Memorandum of understanding Reached at Osaka.

Mr. KELLOCK: At page 25 of the brief, Section G, we say:

"The increase of imports from Japan of these gloves and mittens was from 30,566 dozen pair in 1934 to 497,067 dozen pair in 1935 (See Exhibit 382 and evidence 6212 l. 16 to 6313 l. 26). The result of the investigation of the United States Tariff Commission as to comparative cost of production of wool and knit gloves and mittens shows that the average cost for women's sizes in the United States for the year 1935 was $4.36 per dozen and in Japan $1.75; for misses sizes $3.98 in the United States and $1.48 in Japan."

I stop here to point out that my friend has something to say with regard to the difficulty of obtaining costof production from countries, but the United States Tariff Commission in that investigation were apparently

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The COMMISSIONER: Who is Mr. Sundison?

Mr. HALDOR: He is the president of the Canadian Textile Institute of Canada.

The COMMISSIONER: Does what you have read refer only to cotton?

Mr. [illegible]: Yes, sir.

The COMMISSIONER: If you deal with it on the per capita basis it would mean an importation of 12 million square yards into Canada in 1937. I am referring to the first part of the document.

Mr. HALDOR: Yes, on a per capita basis. I am substituting it.

The COMMISSIONER: That will be marked Exhibit LANG.

EXHIBIT LANG: Memorandum of understanding recited at Ottawa.

Mr. HALDOR: At page 22 of the brief, section 3, we say:

"The increase of imports from Japan of three gloves and mittens was from 32,000 dozen pair in 1934 to 497,027 dozen pair in 1936 (see exhibit 532 and evidence vol. 1. 16 to 8481 1. 20). The result of the introduction of the United States Tariff Commission as to comparative cost of production of wool and knit gloves and mittens shows that the average cost for women's gloves in the United States for the year 1935 was $4.30 per dozen and in Japan $1.75; for misses gloves $4.92 in the United States and $1.40 in Japan."

I stop here to point out that my friend has commence to say with regard to the availability of cheap coolie production from countries, but the United States Tariff Commission in their investigation were concerned

able to establish a satisfactory domestic cost of production for these articles.

"Exhibit 383 also shows that the United States had found it necessary to negotiate a restriction, voluntary in its nature on the part of the Japanese exporters, with respect to cotton rugs."

The COMMISSIONER: They found not only the domestic cost but the cost in Japan as well. I thought that was the mystery of mysteries; that is what you are saying here. If they found the one they found the other.

Mr. KELLOCK: They found the domestic cost apart altogether from the Japanese cost and then took the Japanese invoice prices and worked it back.

The COMMISSIONER: Back to what ?

Mr. KELLOCK: Back to Japan. They deducted freight and insurance and packing charges and arrived at what they regarded as cost of production in Japan, but starting with the invoice price in the United States. That is, as I recall, the evidence. That is the method they used in getting at the Japanese cost.

The COMMISSIONER: But cost is one thing and the selling price in Japan is another. You have stated here that they fixed the cost in Japan, not the selling price in Japan. If there is an error there you had better look it up and correct it.

Mr. KELLOCK: I do not think there is an error. There is a difference between cost and selling price.

The COMMISSIONER: Of course there is.

Mr. KELLOCK: They work it back. They took the Japanese invoice and deducted transportation and insurance.

The COMMISSIONER: How far did they work it back ?

Did they stop when they got to the selling price in Japan?

Mr. KELLOCK: Yes.

The COMMISSIONER: Well, that is not cost.

Mr. KELLOCK: They have called it cost.

The COMMISSIONER: What you mean is the Japanese selling price. The cost in the United States is $4.56 and the Japanese selling price is $1.75.

Mr. KELLOCK: In Japan, that is right.

The COMMISSIONER: You might verify that.

Mr. KELLOCK: You will find it at page 6214, line 31:

"The method of ascertaining foreign costs was given, and in essence it was to take the invoice value as ascertained for customs invoices and to ascertain from the importers' invoices and records ocean freight, marine insurance, domestic charges, etc."

The COMMISSIONER: That brings you to the Japanese market, not the Japanese cost.

Mr. KELLOCK: The brief continues:

"With regard to rayon piece goods, the United States duties prior to the 15th of June, 1936, on importations from Japan were 60 per cent ad valorem, plus 45 cents per pound specific on plain rayons while on jacquards the rate was 70 per cent ad valorem and 45 cents per pound specific. From and after the 15th of June, 1936, the duty was reduced to 45 per cent ad valorem and 45 cents per pound specific.

Exhibits 889, 525, and 409 show the imports of Japanese rayon goods into the United States in later years. The reason for the comparative

"smallness of these figures and the contrast between them and the figures pertaining to Canada in 1936 have already been dealt with earlier in this factum and the submission has been made as to the reason why the United States imports are not greater. It is to be remembered also that the reduction in the United States duties against imports of rayons from Japan which became effective in June 1936 was the indirect result of a treaty between the United States and France and it is too early for the results of the lowering of the duties against Japan to have become fully evident. It is however a fact that U.S. imports from Japan of non-jacquard woven fabrics have shown remarkable increase during 1936. According to the January 1937 Rayon Organon imports have been

1934	9,000 pounds
1935	23,000 "
1936(11 months)	220,000 "

The experience of the Dutch East Indies was parallel to the experience of the British Crown Colonies already mentioned. In 1929 the imports from the United Kingdom of cotton piece goods amounted to 108,210,000 square yards while in 1935 this had fallen to 8 million square yards. In 1929 the imports from Japan of cotton piece goods were 193,476,000 yards which by 1935 had risen to 308,400,000 yards. With regard to rayon piece goods, in 1929 imports from the United Kingdom were 17.27 quintals which by 1935 had fallen to 2.47 quintals. (There is an error in this figure on page 6229 of the evidence).

"wallaces of these figures and the contrast between them and the figures pertaining to Canada in 1935 have already been dealt with earlier in this section and the explanation has been made as to the reason why the United States imports are not greater. It is to be remembered also that the reduction in the United States duties against imports of rayons from Japan which became effective in June 1935 was the indirect result of a treaty between the United States and Japan and it is too early for the results of the lowering of the duties against Japan to have become fully evident. It is however a fact that U.S. imports from Japan of non-jacquard woven fabrics have [illegible] [illegible] 1936. Attributing to the Canadian Tariff 1937 Rayon German imports have been

1936	[illegible] pounds
1935	[illegible]
1934 (11 months)	[illegible]

[illegible] the beginning of the Tariff Board inquiries [illegible] to the experience of the Tariff Board inquiries already mentioned. In 1935 the imports from the United Kingdom of rayon piece goods were 1,[illegible],000 square yards while by 1936 had risen to [illegible],000 yards. With regard to rayon piece goods, in 1935 imports from the United Kingdom were [illegible] yards while by 1936 had risen to [illegible] yards. Since in an [illegible] [illegible] Tariff Board [illegible]

" "In 1929 the imports from Japan of rayon piece goods were 6,265 quintals and in 1935 this had risen to 44,719 quintals. Imports from Holland of cotton piece goods in 1929 were 129,876,000 yards and in 1935, 50,334,000 yards. In 1929 the imports from Holland of rayon piece goods were 984 quintals and in 1935, 94 quintals. (Exhibit 392, p.21) The rapid development of Japanese exports to the Dutch East Indies resulted, first, in increased duty rates during 1931-2 and in additional surcharges on various import articles. The new duties failed to check the increase in Japanese imports and at the end of 1933 the government took powers to restrict imports by means of quotas. During 1934-5 after abortive negotiations with Japan a system of quotas, which now covers all classes of rayon and cotton goods, was imposed. In addition to the quota restrictions a system of import licenses has been established since early in 1934. The primary object of these licenses is to maintain the position of European traders in the Dutch East Indies market and to check the development of Japanese importers. (Exhibit 392).

British duties on Japanese rayons: It is illuminating to observe what has been done in Great Britain with regard to duties on Japanese rayons. Exhibit 126, which is an exhibit filed by Mr. Hooper, shows the present Canadian duties on a piece of 27" piece dyed plain taffeta weighing approximately 3-1/3 pounds for 30 years--" This should be yards instead of years.

"In 1929 the imports from Japan of 3 yrs place goods were 2,365 quintals and in 1934 this had risen to 44,710 quintals. Imports from Holland of cotton piece goods in 1929 were 129,270,000 yards and in 1934, 52,884,000 yards. In 1929 the imports from Holland of rayon piece goods were 964 quintals and in 1934, 94 quintals. (Exhibit 302, p.41) The rapid development of Japanese exports to the Dutch East Indies resulted, first, in increased duty rates during 1931-2 and in additional surcharges on various import articles. The new duties failed to check the increase in Japanese imports and at the end of 1933 the government took powers to restrict imports by means of quotas. During 1934-5 [illegible] a system of quotas, which now covers all classes of rayon and cotton goods, was imposed. In addition to the quota restrictions a system of import licences has been established since early in 1934. The primary object of these ~~[illegible]~~ licences is to maintain the position of European traders in the Dutch East Indies market and to check the development of Japanese importers. (Exhibit 302).

Dutch duties on Japanese textiles: It is [illegible] that Mr. Ellis stated to discuss an Japanese imports. Exhibit 1[illegible], which is an extract filed by Mr. Hooper, shows the [illegible] on a piece of 27" piece dyed cotton [illegible] approximately 3-1/2 yards for [illegible]

"--or 9 yards to the pound, and valued at .90 yen per pound or 3 yen per piece. According to Exhibit 126, the Canadian duties amount to 265 per cent of the invoice value F.O.B. Japan. The existing British duties on approximately the same material weighing 8.5 yards per pound and selling at 3.10 yen per 30 yards amounts to over 380 per cent. British duties are based on the CIF value, which would raise the percentage on the Japanese F.O.B. value - See Evidence 6408 1.5 to 6409 1.8. This disparity is even greater in 1937 when the Canadian currency dumping duty is reduced by reason of Exhibit 401.

In the case of cotton goods imported from Japan into Great Britain, regarded as the home of the cotton industry, the situation is remarkable; in 1933 the imports were 128,000 square yards; in 1934, 854,000 square yards; and in 1935, 8,062,000 square yards. (Exhibit 393)."

The COMMISSIONER: Can you bring that up to 1936 ?

Mr. KELLOCK: Yes, My Lord; it is 20 million square yards.

(16595 follows)

MR. KELLOCK: My lord, this is a short clipping. It is a rather interesting point.

THE COMMISSIONER: Was it you, Mr. McRuer, that told me yesterday somebody pointed out that the English cotton industry is paying too much attention to the home market?

MR. McRUER: It was the manager of Lloyd's Bank, in his annual statement to the shareholders, that the English manufacturer -- I don't know that it was applicable particularly to the textile industry -- he said the English manufacturers were going to lose their foreign markets if they didn't pay more attention to them.

THE COMMISSIONER: He probably had in mind, rather, the armament industry.

MR. McRUER: I don't know that the armament manufacturers were manufacturing so much for foreign markets.

THE COMMISSIONER: Well, steel and things of that sort, whatever that may have meant --

MR. McRUER: It was just an editorial comment.

THE COMMISSIONER: In cotton alone between those two years, 1935 and 1936, you have a jump from eight million to twenty million square yards.

MR. KELLOCK: My lord, this is the source that I gave your lordship that twenty million figure from. It is from the Montreal Gazette, and there is another interesting point in it that indicates that it is not only direct imports into Canada from --

THE COMMISSIONER: Into Canada --

Q. Finally, by-the-by, this is a short question. It is a rather interesting point.

THE COMMISSIONER: Has it been, Mr. Monsey, that this we yesterday somebody pointed out that the English cotton industry is giving too much attention to the home market?

MR. MONSEY: It was the manager of Lloyd's Bank, in his annual statement to the shareholders, that the English manufacturer -- I don't know that it was applicable particularly to the textile industry -- he said the English manufacturers were going to lose their foreign markets if they didn't pay more attention to home.

THE COMMISSIONER: We usually hear to think, rather the contrary.

Q. MONSEY: I don't know that the manufacturers were manufacturing so much for foreign markets.

THE COMMISSIONER: Well, steel and things of that sort, whatever that may have been --

MR. MONSEY: It was just an editorial comment.

THE COMMISSIONER: Yesterday they mentioned that, but, Lord bless me, you have a jump from six million to twenty million square yards.

MR. MONSEY: Yes, I see the reason that I gave very clearly this family quilting figures there. It is from the general results, and there is another important point in it that indicates that it is not mainly export business into Canada from --

THE COMMISSIONER: Long ranges --

MR. KELLOCK: When we are dealing with Canadian imports from Japan we have got to consider not only the direct imports but something else. Here is what it says:

"London, February 4,-- Alarmed by the huge increase in imports of Japanese cotton goods which, it is declared, are being finished in Lancashire and reshipped to the British Dominions as British produce, Lancashire Members of Parliament are pressing the Government to confine the definition of British cotton to 'fabrics spun, woven and processed in the United Kingdom'.

The Board of Trade, it is said, has endeavoured to allay the storm by promising an inquiry.

In the past two or three years"--

THE COMMISSIONER: We will have to go over there.

MR. McRUER: Another Royal Commission.

MR. KELLOCK: We are well equipped, my lord, I think.

" In the past two or three years the total annual imports of grey cotton cloth have risen from 100,000 yards"-- I gave your lordship 125,000-- well, that was square yards -- "to more than 20,000,000. The bulk of this cloth is supplied by Japan. It finds its way to Lancashire, where it is processed and printed in colours and shipped overseas as British merchandise. Not only does it thus secure the Imperial preference awarded Lancashire goods in the Dominions and Crown Colonies, but it

POST. BRIGIC

Mr. Lidgett: Now, we are dealing with manufactured imports from Japan as have not to consider not only the direct imports but something else. Here is what it says:

"London, February 4,--- Learned in the high tariff in imports of Japanese cotton goods which, it is believed, are being diverted in transshipment and shipped to the British possessions as British product, Manchester Banks are of the opinion of British cotton to 'Dobbies' sheet, woven and processed in the United Kingdom'.

The Board of Trade, it is said, has authority to allow this stamp by proclamation on imports.

In the past two or three years--

Mr. Bennett: We will have to go over those years.

Mr. Lidgett: We are well equipped, my lord, I think.

" In the past two or three years the total annual imports of grey cotton cloth have risen from [illegible] yards -- I are just [illegible] with [illegible] yards -- To [illegible] The [illegible] which is equivalent to [illegible] Yards [illegible] in [illegible], where it is [illegible] and printed in colours and stamped [illegible] an [illegible] manufacture. The [illegible] the [illegible] government [illegible] in the [illegible] and [illegible] Colonies, but it

"evades the quota restrictions imposed on Japanese goods by the colonies and some Dominions. The Lancashire weaving and spinning industry holds this unfair competition and is urging the Government to take early action."

So Japan has got the benefit of some of our British preference apparently, if that is well founded.

Paragraph 72, my lord --

" The action taken by the countries enumerated above with regard to the menace of Japanese imports are but illustrations of what has been going on throughout the world in recent years. A reference to Exhibit 1226 shows that by June of 1936 exports of cotton piece goods from Japan were subjected to restrictive measures in 56 out of 106 markets which can be identified from Japanese export statistics. In 40 of these markets the restriction took the form of 'limitations' while in the other 16 the restriction took the form of a tariff preference in favour of Great Britain. The quantity of Japanese export trade in piece goods affected by these restrictions was about 67% of the total Japanese piece goods exports in 1935".

Then, I have some conclusions from the experience of these other countries.

" It is submitted that the experience of other countries, to which reference has been made, with regard to importations of Japanese goods is one that serves as a valuable guide and at the

"Having the joint committee formed so far, we may be the primary one may decline. The Lancashire weaving and spinning industry holds this unfair competition and is urging the Government to take action thereon."

So Japan has got the benefit of some of our British preference apparently, if that is well founded.

Paragraph 72, my lord --

"The action taken by the committee summarised above with regard to the issues of dumping imports are but illustrations of what has been going on throughout the world in recent years. A reference to Cmd 1886 shows that by June of 1928 imports of various commodities Japan were subjected to restrictive measures in 36 out of 100 markets which can be identified from Japanese export statistics. In 40 of these markets the restriction took the form of 'limitations' while in the other 16 the restriction took the form of a tariff surcharge in five of these markets. The quantity of Japanese export trade in piece goods affected by these limitations was about 47% of the total Japanese piece goods exports in 1928".

Then, I have some correlations from the experience of these other countries.

"It is noticing that discrimination of a country, by which a foreign has been made, [illegible]

"At Tientsin, in Northern China, in one year there was a Japanese [illegible]

"the same time as a warning. Two conclusions may be drawn and have been drawn and acted upon in the case of other countries, namely, that tariffs alone have been found inadequate to protect domesit manufacturers in various countries against importation of Japanese goods in quantity. This is evidently the opinion of those countries which established the system either of quotas or import licenses. It was acted upon by the United States in substituting the domestic value of similar goods for the purpose of computing the duty for the foreign value in the case of wool knit gloves and mittens. It is also the opinion of the organized wool textile industry in the United States. Therefore, such percentages of duties as shown in Exhibit 868 ranging to seemingly high figures are not of a nature to stop imports from Japan as these actual examples in exhibit 868 were imported.

The same view is expressed by the Joint Committee of Cotton Trade Organizations in Great Britain in its study dated September 9, 1936, which comprises Exhibit 1226. On page 5 of that exhibit in the middle paragraph the following appears: 'It appears that the quota as a barrier to Japanese competition is much more effective than the tariff. Quotas have been effective in the Crown Colonies, Peru and the Philippine Islands and have at least prevented any serious

"the good that is making. The benefactors may be known and have been known and noted upon in the case of other countries, namely, that tariff's alone have been found inadequate to protect domestic manufacturers in various countries against importation of foreign goods in quantity. This is evidently the condition of those countries which established the system either of quotas or import licenses. It was noted upon by the "Pioneers in substituting the domestic value of similar goods for the purpose of computing the duty for the foreign value in the case of wool knit gloves and mitters. It is also the opinion of the organized wool textile industry in the United States. Therefore, such procedures of tariffs as shown in Exhibit 000 according to economic theory figures are not of a nature to stop imports from such as these normal examples in exhibit 000 were imported.

The same view is expressed by the Joint Committee of Boston Trade Organizations in Trade Bulletin in its study dated October 9, 1958, under consideration (Exhibit 000). In part it is stated in Exhibit 11 of Exhibit 000 concerning the 100-mile square: "It appears that the quota as a barrier is somewhat unstable in such case effectively than the tariff. Quotas have been difficult in the cross countries, such as the Philippines, Italy and have at least prevented any serious

"expansion in India and the Dutch East Indies. Tariffs, on the other hand, have had little effect unless as is the case in most of the Latin American countries considered they have been prohibitively high. The exchange disadvantage in Argentina has not prevented Japan from increasing her share of the market to nearly 50%; it may also be observed that the 25% British preference operating in India before the quota proved no obstacle to Japan. The most interesting point is the case of Egypt; here a 40% surcharge seemed at first to be disastrous but the small recovery which has since been made suggests that even a 40% handicap cannot permanently exclude Japan.

There is another conclusion which is to be drawn from the experience of other countries which is particularly appropriate to the situation which has grown up in Canada since the 1st of January, 1936, namely, that while imports from Japan may be small in one year, in the next year they may completely dominate the market. This latter conclusion can be illustrated graphically by the following:

Rayon exports into India increased from 2 million to 104 million yards in 4 years.

Cotton piece goods imports into the United States increased from 7 million to 36 million square yards in one year.

Imports of wool gloves and mittens into the United States increased from 30,555 dozen to 497,000

"expansion in India and the British East Indies.

Textile, on the other hand, have had little scope unless as in Japan in most of the Asiatic American countries considered they have been prohibitively high. The economic disadvantage in transition has not prevented Japan from increasing her share of the market to nearly 50%; it may also be observed that the 25% British preference during in India before the war worked no material to Japan. The most interesting point is the case of Egypt; here a 40% surcharge caused at first be disastrous but the small recovery which has since been made suggests that even a 40% handicap cannot permanently exclude Japan.

There is another conclusion which is to be drawn from the experience of other countries which is particularly appropriate to the situation which has grown up in Canada since the 1st of January, 1926. Briefly, textile imports from Japan may be small in one year, in the next year they may completely dominate the market. This latter conclusion can be illustrated graphically by the following:

Cotton piece goods imports into the United States increased from 2 million to 55 million square yards in the 1 year.

Imports of wool fibres and mixtures into the United States increased from 20,000 pounds to 1,000,000 pounds in 1 year.

"expansion in India and the British East Indies.

Textile, on the other hand, have had little scope unless as in Japan in most of the Asiatic American countries considered they have been prohibitively high. The economic disadvantage in transition has not prevented Japan from increasing her share of the market to nearly 50%; it may also be observed that the 25% British preference during in India before the war worked no material to Japan. The most interesting point is the case of Egypt; here a 40% surcharge caused at first be disastrous but the small recovery which has since been made suggests that even a 40% handicap cannot permanently exclude Japan.

There is another conclusion which is to be drawn from the experience of other countries which is particularly appropriate to the situation which has grown up in Canada since the 1st of January, 1926. Briefly, textile imports from Japan may be small in one year, in the next year they may completely dominate the market. This latter conclusion can be illustrated graphically by the following:

Cotton piece goods imports into the United States increased from 2 million to 55 million square yards in 1 year.

Imports of wool fibres and mixtures into the United States increased from 20,000 pounds to 1,000,000 pounds in 1 year.

dozen in one year.

Imports of cotton piece goods into the Philippines increased from 24½ million to 87½ million square yards in 3 years.

Imports of cotton piece goods into Great Britain increased from 125,000 to 8,060,000 in 2 years"--

and you can make that now 20,000,000 in three years --

"Imports of plain rayon fabrics from Japan into the United States have jumped from 9,000 pounds to over 220,000 pounds in two years."

If we study our own figures of 1936, 6,045 pounds and January, 1937, 66,873 pounds, we have got a comparable tendency. At pages 380 and 381 of "The Japan Silk Year Book" there is a statement on the condition of production in 1934. I have already read that to your lordship, and I will not repeat it.

" It has already been pointed out that the importation of rayon and cotton piece goods into Canada which has taken place since the 1st of January, 1936, is not only substantial but increasing in volume and in variety."

Now, my lord, I have given your lordship the figures on rayons and I have the figures here on cotton piece goods which I should like to give to your lordship.

THE COMMISSIONER: They are not in the brief now?

MR. KELLOCK: No, my lord. With regard to cotton piece goods in 1934 the imports were 33,406 pounds, in 1935 34,847 pounds and in 1936 144,269 pounds, and cotton manufactured goods other than piece goods,

[illegible] is low-priced.

Imports of cotton piece goods from the United [illegible] increased from 24½ million to 37½ million square yards in 3 years.

[illegible] increased from 140,000 to 3,000,000 in 2 years--and you can make that now 30,000,000 in three years.

"Imports of plain rayon fabrics from Japan into the United States have jumped from 3,000 yards to over 300,000 yards in two years."

If we apply our own figures at 1934, 6,045 yards and January, 1937, 38,[illegible] yards, we have got a phenomenal tendency. At pages 380 and 381 of the Japan Bill that is, there is a statement on the condition of production in 1934. I have already read that to your lordship, and I will not repeat it.

" It has already been pointed out that the importation of rayon and cotton piece goods into Canada which has taken place since the 1st of January, 1936, is not only consequential but increasing in volume and in variety."

Now, my lord, I have given your lordship the figures of rayons and I have the figures here on cotton piece goods which I should like to give to your lordship.

THE COMMISSIONER: They are not in the brief as [illegible].

Mr. McLEAN: No, my lord. I'm [illegible] cotton piece goods in 1933 the imports were 34,606 yards; in 1935 [illegible] 1936 [illegible] yards.

in 1935 the figure was 24,437 --

THE COMMISSIONER: What year?

MR. KELLOCK: In 1935, my lord, 24,437 pounds, and in 1936 176,732 pounds. Those figures are from Trade of Canada.

MR. McRUER: One hundred and what?

MR. KELLOCK: 176,732.

MR. McRUER: Trade of Canada?

MR. KELLOCK: Yes.

MR. McRUER: Into the United States?

MR. KELLOCK: No, this is into Canada; these are imports into Canada. I am speaking about those figures. The second sentence in paragraph 77, my lord --

"Even although these facts can be ignored and it be argued that the volume of imports is still relatively small compared to the available Canadian market, it must be borne in mind, it is submitted, that these imports are but the opening wedge. Where these goods have come in other goods must inevitably follow in ever increasing quantities as this new channel of trade is opened up and it is the weight of the evidence before the Commission which establishes beyond question that the Japanese exporter can produce and ship goods of a quality which can compete with anything produced in Canada at prices with which the Canadian manufacturer cannot compete and that what has

ROBT. BRYDIE
OFFICIAL STENOGRAPHER
OTTAWA CANADA

is that the figure was 24,000 —

MR. BRIDGE: In 1929, my lord, 24,000 pounds, and in 1930 27,000 pounds. Some figures are given here of Canada.

MR. MACTAVISH: Not exactly.

MR. BRIDGE: 1929.

MR. MONKS: Trade of Canada?

MR. BRIDGE: Yes.

MR. MACTAVISH: Not Russian trade.

MR. BRIDGE: No, but it has Canadian trade are imports into Canada. I am speaking about those figures. The second sentence in paragraph 77, my lord —

"Even although these facts can be i mored and it be argued that the volume of imports is still relatively small compared to the available Canadian market, it must be borne in mind, it is noticeable, how some imports are on the country rises. It is those goods that have been increasing quantities as this new channel of trade is opened up and it is the results is the evidence before the Commission which establishes beyond question that the Japanese exporter can produce and ship goods of a quality which has enabled him to compete in Canada in prices and in the Canadian

"taken place in other countries will undoubtedly take place in Canada.

It is further to be remembered that a further acceleration of imports will be facilitated in 1937 by reason of the lowering of the proclaimed value of the yen from 39.5¢ to 35¢. This change will make Canadian duties on Japanese goods about 20% lower."

MR. McRUER: That cannot be true.

MR. KELLOCK: And next year --

THE COMMISSIONER: About the yen; you are giving me a percentage there,--

MR. HOOPER: I worked that out to 11½%.

THE COMMISSIONER: What do you say there? You say the yen now is going to be valued at 35 cents?

MR. KELLOCK: If one computes the ordinary duties and the currency dumping duty on the basis of 39.5 and on the basis of 35 cents the difference in the total duties is about 20%. I have set out the two exhibits, 868 and 898, for comparative purposes. Next year --

THE COMMISSIONER: Oh yes, between the two totals.

MR. KELLOCK: Yes, my lord, between the two totals. Next year the proclaimed value of the yen, if the yen stays around 28 or 29, is not going to be far away from the ordinary current rate of exchange.

" The imports to date have already had actual harmful effects on domestic manufacturers. In the early part of the year "--

THE COMMISSIONER: Well, that is a statement now.

MR. KELLOCK: I am going on to support it, my lord.

"In the early part of the year"-- it ought to be in the form of a submission but I am going to discuss the evidence --

"In the early part of the year the first imports of Japanese rayons which made themselves evident were the cheaper grades of taffetas. It was strenuously contended throughout the cross-examination of various witnesses by counsel for the Commission that these materials were of an inferior quality when compared to the material which was being produced by Canadian mills at a higher cost of production than the Japanese laid down price in Canada and that therefore imports of these cheap taffetas could have no effect on Canadian mills. The evidence, however, is quite to the contrary. The evidence, in the first place, is that these cheap Japanese cloths were sufficiently suitable for certain purposes, the demand in connection with which was formerly filled by Canadian cloth".

There were several witnesses who gave evidence about that and I have set them out there.

"The same result was produced by similar importations into Britain.

Even the importation of these cheaper taffetas at the beginning of the year had a very disturbing effect on buying by the Canadian trade. It is quite easy to see from the circular sent out by A. B. Fisher & Company in January, 1936 (Exhibit 148) that this concern looked for a

MR. KLUCZOK: I am going on to support it, my lord. The one really good of the Court — I would say in the form of a situation but I am going to discuss the evidence —

"In the early part of the year the first imports of Japanese sugars which made themselves evident were the cheaper grades of refiners. It was extraordinary contended throughout the cross-examination of various witnesses by counsel for the Commission that these materials were of an inferior quality when compared to the material which was being produced by Canadian mills at a higher cost of production than the Japanese laid down price in Canada and that therefore imports of these cheaper refiners could have no effect on Canadian mills. The evidence, however, is quite to the contrary. The evidence, in the first place, is that these cheap Japanese cloths were sufficiently satisfactory for Canadian purposes. The Japanese in competition with which was formerly filled by Canadian cloth, [illegible] Canadian consumers may prefer Canadian cloth [illegible] than any other.

"The same result was produced by similar importations into Britain.

[illegible]

[illegible]

"large business in fabrics imported from Japan". They leased new premises even though they had to continue paying rent on their old premises.

"The evidence as to the building up of consignment stocks in Canada by this concern shows that it is prepared to develop this business to the limit. The evidence as to the disturbance influencing the holding off of orders by Canadian buyers is set out in the evidence", and I refer to the evidence there. There were several witnesses who gave evidence as to that.

"It is also in evidence that the E. Brown Silk Company were producing from 35 to 40 thousand yards per month of these rayon taffetas in 1935 while in 1936 their production has been cut to approximately one-half, resulting in a reduction in employees from 35 to 14. This concern is jobbing these Japanese taffetas now. Mr. Northcott says that the Japanese imports of cheap taffetas are displacing Canadian goods.

According to exhibit 879, the imports from Japan in the first nine months of 1936 were 250,730 pounds of rayon fabrics which would represent approximately three months' production of rayon at the Sherbrooke mill of the Dominion Textile Company Limited, or put another way it will represent the production of an 130 loom mill working at 55 hours throughout the year and that would employ about 100 employees."

"Many business in Canada [illegible] they issued new premiums even though they had to [illegible] [illegible] and [illegible].

"The evidence as to the building up of [illegible] stocks in Canada by this company shows that it [illegible] required to develop this business to the limit. The evidence as to the disturbance influencing the holding off of orders by Canadian buyers is set out in the evidence, and I refer to the evidence there. There were several witnesses who gave evidence as to that.

"It is also in evidence that the [illegible] Company were producing from 35 to 40 thousand cases per month of these [illegible] in 1929 while in 1930 their production has been cut to approximately one-half, resulting in a reduction in employees from 65 to 34. This concern is [illegible] says that the Canadian imports of cheap [illegible] for [illegible].

[illegible] in the first nine months of 1929 was 350,000 approximately three months' production of [illegible] at the Strathroy mill of the Dominion Textile [illegible]

THE COMMISSIONER: 55 hours per week.

MR. KELLOCK: Yes, my lord, per week.

"Moreover it should be noted that whereas imports from Japan of rayons and mixtures have increased 625% in 1936 over 1935 Canadian mills sales of rayons increased only 2½% in 1936 over 1935."

MR. McRUER: They are two different basic figures.

MR. KELLOCK: Then, as to the balance of trade.

"It has been argued that the situation with regard to the balance of trade between Canada and Japan being unfavourable to Japan on the basis of value in dollars was a situation which entitled Japan to ask for redress in order that there should be more or less of an even balance of trade. It is submitted that this argument is one which Japan herself does not give effect to in dealing with countries where Japanese exports to such countries exceed Japanese purchases. Further, the argument ignores the entirely different level in monetary value of exports in the case of a country such as Canada as compared to the monetary level of exports by Japan. Having regard to the evidence before the Commission as to the greatly lower level of Japanese selling prices, it would be interesting to value the Japanese exports to Canada on the basis of the selling prices of similar goods produced in Canada, and then to compare this result with the value of Canadian exports to Japan."

THE COMMISSIONER: Just pause a moment there; alright.

MR. KILLOCK: "It is submitted such a comparison would give a much truer picture of the balance of trade between the two countries than the comparison at present used. Further, if the balance of trade between Canada and Japan for the fiscal year 1935 is examined in relation to the respective populations of the two countries it will be found that every Canadian bought 80¢ worth of Japanese goods while each Japanese bought only 11¢ worth of Canadian goods".

MR. McRUER: What about China and India?

MR. KILLOCK: Your lordship will recall that that argument was put up by Japan in dealing with Egypt. I have just read out a few moments ago what the Egyptians said, that they would not accept imports from Japan to the value of Japanese purchases of Egyptian raw cotton in view of the entirely different level of selling prices of the respective goods. It meant a much larger volume of Japanese imports to Egypt than the sale of cotton by Egypt to Japan.

" There is a further consideration which the argument overlooks, namely that when the Canadian Government records are examined as to the history of the balance of trade between Canada and Japan during the approximately 40 years these relations have been recorded, the balance of trade is shown to be an unfavourable balance so far as Japan is

MR. DOUGLAS: Just pause a moment thus; alright.

MR. DOUGLAS: "It is unfortunate such a course would give a much truer picture of the volume of trade between the two countries than the course it pursues now. Further, if the balance of trade between Canada and Japan for the fiscal year 1937 is examined in relation to the respective peoples of the two countries it will be found that every [illegible] would have [illegible] each Japanese bought only 1/9 worth of Canadian goods".

Q. Mr. Chairman: What month this and [illegible]

A. [illegible] that [illegible] will [illegible] argument was put to by Japan in dealing with Egypt. I have just read out a few comments and that the Egyptians said, that they could not secure imports from Japan to the value of Japanese purchases of Egyptian raw cotton in view of the unlikely [illegible] level of selling prices of the respective goods. It meant a much larger volume of Japanese imports to Egypt than the sale of cotton by Egypt to Japan.

" There is a further consideration which the Government witness has examined as to the [illegible] of the [illegible] and [illegible] have been measured, the balance of trade is [illegible] to be an unfavourable balance so far as Japan is

"concerned only in the later years. Moreover the recorded figures of imports from Japan are direct imports only, and to them must be added Canadian purchases of Japanese raw silk in the United States". My friend agrees with that.

MR. McRUER: I don't agree with the statement about the balance of trade.

MR. KELLOCK: No, I am talking about adding the imports.

MR. McRUER: The last 20 years it has been very excessively in favour of Japan.

THE COMMISSIONER: Where does Canada rank as an exporting nation, fifth?

MR. KELLOCK: That is my recollection, my lord.

THE COMMISSIONER: So you have only eleven million people ranking fifth as exporters in the world.

MR. McRUER: You ought to do it on a per capita basis.

THE COMMISSIONER: The rest of the world might object.

MR. KELLOCK: Perhaps this might be used against us some time.

THE COMMISSIONER: You are only going to take so much per head.

MR. KELLOCK: It is only a measure, but it is one side of the picture.

MR. McRUER: It is like a self-contained economic entity where we are going to eat our own wheat.

MR. KELLOCK: Of course, your lordship will recall

"concerned only in the later years. Moreover the
[illegible] figures for Japan are misleading
imports only, and to them must be added Canadian
purchases of Japanese raw silk in the United States".
My friend agrees with that.

Mr. McKAY: I don't agree with the statement about the Dominion as a whole.

Mr. HALLOCK: No, I am talking about adding the imports.

Mr. McKAY: The last 20 years it has been very excessively in favour of Japan.

Mr. [illegible]: [illegible] exporting nation, fifth?

Mr. HALLOCK: That is my recollection, my lord.

THE COMMISSIONER: So you have only eleven million people reaching fifth as exporters in the world.

Mr. McKAY: You ought to do it on a per capita basis.

THE COMMISSIONER: The rest of the world might object.

Mr. MULLOCK: Perhaps this might be used against us some time.

THE COMMISSIONER: You are only going to raise so much per head.

Mr. [illegible]: It is only a measure, but it is the [illegible] of the climate.

Mr. McKAY: It is like a self-[illegible] [illegible]

[illegible]

a moment or so ago comparing the quota of imports of cotton piece goods into the United States on a per capita basis --

THE COMMISSIONER: That is a very different thing. I was trying to get some idea of the size of the market for consumption, and if 120,000,000 people import so much then with 11,000,000 people you take a percentage of that, and get about such a figure. That has nothing to do with this.

MR. MERLOCK: Quite; it is only one side. Paragraph 85.

" It is difficult to follow the logic of the argument that as between any two countries there should exist an even balance of trade. It does not exist between two countries in such close proximity as the United States and Canada and at the moment there is no strong effort in either country to bring about a parity. There may exist an unfavourable balance of trade as between two countries which may well be compensated by a favourable balance of trade between the one country unfavourably affected and a third country. It has been the attempt on the part of so many countries to create bilateralism between each country and every other country with which it trades that has caused such widespread disturbance in world trade in recent years to the prejudice of the world as a whole.

Japan herself does not recognize the force of the

a market or so ago concerning the amount of imports of cotton piece goods into the United States on a per capita basis —

THE RIGHT HON. MR. MACKENZIE KING: That is a very different thing. I was trying to get some idea of the size of the market for consumption, and if 120,000,000 people import so much then only 11,000,000 people can take a percentage of that, and get about such a figure. That has nothing to do with this.

HON. MR. MACKENZIE: Quite; it is only one side.

Paragraph 85.

" It is difficult to follow the logic of the argument that as between any two countries there should exist an even balance of trade. It does not exist between two countries in such close proximity as the United States and Canada and at the moment there is no strong effort in either country to bring about a parity. There may exist an unfavourable balance of trade as between two countries which may well be compensated by a favourable balance of trade between the one country unfavourably affected and a third country. It has been the attempt on the part of so many countries to create bilaterialism between each country and every other country with which it trades that has caused such widespread disturbance in world trade in recent years to the complaints of the world as a whole.

Then further down the paragraph the Tariff Board

"bilateral argument, in her dealings with countries other than Canada, in cases where her balance of trade with such countries is favourable to Japan. It is well known that where any country has a favourable balance of trade with Japan it is due to the fact that a large proportion of such country's exports to Japan consists of raw materials which Japan requires. Taking Canada, for instance, the exports to Japan during the fiscal year 1935 were $4,146,639, in manufactured goods and $12,789,250 worth of raw materials and partially manufactured products. It is most unlikely that Japan would have purchased these raw materials from Canada had she been able to purchase them more advantageously in any other market of the world or to produce them herself."

In connection with Japanese wheat purchases, exhibit 668 has the following --

THE COMMISSIONER: What is that in?

MR. KELLOCK: That, my lord, is the Oriental Economist.

"' For some time previously, the United States and Canada were the chief sources of the Japanese wheat supply, but since about five years ago patronage was shifted to Australia because of cost considerations, this tendency'"--

MR. McRUER: It doesn't say that in the book.

MR. KELLOCK: It does say that in the book. I am quoting from it.

"Historical research, it has revealed with remarkable
other than Canada, in cases where her balance of
trade with such countries is favourable to Japan.
It is well known that when any country has a
favourable balance of trade with Japan it is due to
the fact that a large proportion of such country's
exports to Japan consists of raw materials which
Japan requires. Taking Canada, for instance, the
exports to Japan during the fiscal year 1930 were
$4,140,000, in manufactured goods and $12,780,000
worth of raw materials and partially manufactured
products. It is most unlikely that Japan would
have purchased these raw materials from Canada
had she been able to produce them more advantage-
ously in any other market of the world or to produce
them herself."

In connection with Japanese wheat purchases, exhibit
588 has the following --

THE COMMISSIONER: What is that?

MR. KILLOCK: That, my lord, is the original
document.

"For some time previously, the United States
and Canada were the chief sources of the Japanese
wheat supply, but since about five years ago
Australia was shifted to another line because of
[illegible] Australian."

MR. MOTT: It doesn't say that in the book.

MR. KILLOCK: It does say that in the book. I am
[illegible] from it.

MR. McRUER: This is quoted?

MR. KELLOCK: Yes. My friend uses this exhibit at page 8 of his brief, and gives the figures, but not this paragraph which follows the figures my friend gives there.

"--this tendency toward ever greater wheat imports from Australia subsided after 1933, in connection with a greater domestic production of wheat on a five-year program of acreage expansion. The successful execution of this project has made our country virtually independent of outside supplies as far as domestic needs for flour making are concerned. Japan therefore is now importing wheat for the specific purpose of turning it into flour for export purposes only".

THE COMMISSIONER: Of course, that is perfectly true; the person who is doing the buying will buy in the cheapest market, other things being equal, but the governments do not do the buying. The governments by handling their tariffs and quota measures and so on make the foreign article cheaper or dearer to the purchaser at home, and they direct in that way where he is to do his buying.

MR. KELLOCK: Yes.

THE COMMISSIONER: You say the Japanese purchase some raw materials in Canada because they are cheaper there. They would buy them some place else if they were cheaper there. Those who are buying are not

Q. MCKIM: This is quoted?

A. FIELDING: Yes. My friend says this result at page 8 of his brief, and gives the figures, but on this paragraph which follows the figures my friend gives there.

"—this tariffed tower and over protector chest imports from Australia received since 1930, in connection with a protective investigation of about as a five-year program of economic expansion. The successful expansion of this product has made our country virtually independent of outside supplies as far as domestic requirements for flour milling are concerned. Upon therefore the granting of the necessary permission of turning it into flour for export purposes only".

THE COMMISSIONER: Of course, that is certainly true; the person who is doing the buying will buy in the cheapest market, other things being equal, but the governments do not do the buying. The governments by heralding their tariffs and quota measures and so on make the foreign article cheaper or dearer to the purchaser at home, but they direct in that way where he is to do his buying.

A. FIELDING: Yes.

Mr. MCLEAN: The Mr. McLean product and are [illegible] is in demand because they are cheaper there. They would buy them some place else if they were cheaper there. Those who are buying are not

the Japanese Government; they are the Japanese people, but in this case the Japanese Government by putting up its tariff and putting it down again can make it so the goods will be cheaper to the Japanese consumer or dearer.

MR. McRUER: That is the way the exchange is established.

THE COMMISSIONER: It is no argument to say the Japanese are buying from us because our goods are cheaper. We are only buying from them because their goods are cheaper. That is what you are afraid of; their rayon is going to be cheaper than yours, but government action acts indirectly in making goods dearer. I don't see it is any argument that we must not thank the Japanese for buying pulp from us. They would buy it elsewhere if they could get it cheaper. Of course they would.

MR. KEILOCK: If we are talking about purchases from Japan --

THE COMMISSIONER: The question is ought our government to act so that the Japanese government will in turn make Canadian products so dear to the Japanese consumer they won't buy them?

MR. KEILOCK: Yes, but that is looking at it from the standpoint of Japan buying our raw materials.

THE COMMISSIONER: That is what you are talking of. You say they only buy their raw materials here because they are cheaper here.

MR. KEILOCK: Yes.

THE COMMISSIONER: Now, those who are doing the

Japanese Government; they are the Japanese people, but in this case the Japanese Government by putting up its tariff and putting it down again can make it so the X goods will be cheaper to the Japanese consumer or dearer.

MR. REDMAN: That is the way the exchange is adjusted.

THE CHAIRMAN: It is no argument to say the Japanese are buying from us because our goods are cheaper. We are only buying from them because their goods are cheaper. That is what you see afraid of; their tariff is going to be cheaper than yours, but government action acts indirectly in making goods dearer. I don't see it is any argument that we must not think the Japanese for buying only from us. They would buy it elsewhere if they could get it cheaper. Of course they would.

MR. MACDONALD: If we are talking about purchases from Japan --

THE CHAIRMAN: The question is ought our government to act so that the Japanese for reason will in turn make Canadian products so dear to the Japanese consumer that we'll buy them.

MR. MACDONALD: Yes, but that is looking at it from the standpoint of Japan buying our raw material.

THE CHAIRMAN: That is what you are talking. MR. MACDONALD: You say they only buy their raw materials here because they are cheaper here.

MR. REDMAN: Yes.

THE CHAIRMAN: Then they are doing the

buying are not the Japanese government --

MR. KELLOCK: They are the citizens.

THE COMMISSIONER: The citizens; they buy here because their government arranged its tariff and treaty measures so that Canadian goods are cheaper there than they are from any place else. If they put up barriers against us and excluded our goods of course the consumer over there would go some place else.

MR. KELLOCK: If we consider wheat, though, in order to make the Canadian price attractive to the Japanese purchaser in Japan there would have to be some kind of an obstacle in the way of imports of Australian wheat into Japan.

THE COMMISSIONER: If, for instance, the Japanese government put up a very high tariff against Australian wheat, well, the Japanese would have to look elsewhere.

MR. KELLOCK: Be forced here.

THE COMMISSIONER: That is a natural law of economics. You buy in the cheapest market. Nobody is going to pay any dearer just for the pleasure of buying in that market.

MR. McRUER: But if they sell in this market there will be an exchange here in the purchase of wheat, and then they will be able to purchase wheat more advantageously because of having bills of exchange here with which to purchase it.

MR. KELLOCK: That is a very very indirect effect though.

THE COMMISSIONER: All that has some effect.

ROBT. BRYCE
CHARTERED ACCOUNTANT
AUDITOR
MONTREAL - CANADA

trade and put the Canadian government —

Mr. Ilsley: Trade and the citizens.

Mr. Hamilton: The citizens then had some certain trade advantages (reading the part) and

5 thereby assures us that Canadian goods are cheaper there than they are from any place else. If they put up barriers and met us and excluded our goods of course the consumer over there would go some place else.

Mr. KELLOCK: If we consider about, though, in order to make the Canadian policy attractive to the Japanese producer in Japan there would have to be

10 some kind of an obstacle in the way of imports of manufactured goods into Japan.

The Chairman: Mr. Hamilton, the government put up a very high tariff against Australian wheat. Well, the Canadian wheat got in just as cheap.

Mr. KELLOCK: Do forced dues.

15 Mr. HAMILTON: That is a natural law of economics. You buy in the cheapest market. Nobody is going to buy any dearer just for the pleasure of paying the dual duties.

Mr. HOWARD: But if they sell in this market there will be no trading done in the varieties of goods, and then they will be able to purchase what more advantageously because of having bills of exchange here with which to purchase it.

20 Mr. HAMILTON: That is a good point. Continue, please.

25 Mr. HOWARD: The Canadian government will have the same effect.

30

MR. KELLOCK: It requires more than that to overcome, though--

THE COMMISSIONER: The recent treaty made with Germany by Japan is based entirely on that, for instance.

MR. KELLOCK: Yes, but it takes more than that alone, my lord, as your lordship points out.

THE COMMISSIONER: I know, but it is no argument that Japan is only buying from us because she cannot get it cheaper any place else.

MR. KELLOCK: All I am saying is this that the switch of purchase from Canada to Australia has been due to the fact that in these years she was able to get it more advantageously from Australia.

THE COMMISSIONER: Absolutely.

MR. McRUER: That was my contention.

THE COMMISSIONER: I was told in Winnipeg by those interested in selling Canadian wheat and Canadian flour that that is due to two or three things. In the first place, there is the proximity. In the second place there is the advantage in the exchange, the decline of the Australian currency, and those are the reasons.

MR. KELLOCK: That is very clear from an examination of exchange figures and I have that here; and then, paragraph 87 --

"In the case of Australia where there was a large unfavourable balance of trade so far as Japan was concerned and where such unfavourable balance of trade was due to the large purchases of wool which Japan required, this argument was

Mr. MILLER: It requires more than that to overcome, though.

THE CHAIRMAN: The recent trouble made with currency by Japan is based entirely on that, for instance.

Mr. MUNGER: Yes, but it takes more than that alone, my lord, as your lordship points out.

THE CHAIRMAN: I know, but it is no argument that Japan is only buying from us because she cannot sell to anybody else.

Mr. MUNGER: All I am saying is this that the switch of purchase from Canada to Australia has been due to the fact that in these years she was able to get it more advantageously from Australia.

THE CHAIRMAN: Absolutely.

Mr. MUNGER: That was by convenience.

THE CHAIRMAN: I was told in Australia by the interested in selling Canadian wheat and Canadian flour that that is due to two or three things. In the first place, there is the cheaper [illegible]. In the second place there is the advantage in the exchange, the decline of the Australian currency, and those are the reasons.

Mr. MUNGER: That is very clear from an examination of exchange figures and I have that here; and then, paragraph 27 --

" In the case of Australia, where there was a large unfavourable balance of trade so far as Japan was concerned and where such unfavourable balance of trade had to be met by large purchases of wool which Japan required, this argument

"put forward by Japan but was not given effect to by Australia. In fact the new duties and system of import licenses put into effect in Australia in 1936 can have the effect only of further extending the unfavourable balance of trade so far as Japan is concerned."

THE COMMISSIONER: Again the question comes up there as to what change has taken place since.

MR. McRUER: The change that took place was founded on this, what my friend says is not the basis now; the Australian people said "here now, you have got to buy".

MR. KELLOCK: We are going to get that exact information.

". It is safe to say that a scrutiny of Japanese exports to the countries of the world would show that with the exception of countries from whom she requires to purchase her raw materials the balance of trade is preponderantly in favour of Japan. This is shown by the evidence with regard to the large number of countries throughout the world which have had to enact restrictive measures so far as Japanese imports are concerned. Until this situation arose in so many countries throughout the world there was no suggestion on the part of Japan that there should be a parity in the balance of trade between Japan and these respective countries. It was only when agitation arose in various countries to enact such restrict-

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"but Japan by Japan but was not given effect to by Australia. In fact the new duties and arrangements of import licences put into effect in Australia in 1936 can have the effect only of further extending the unfavourable balance of trade so far as Japan is concerned."

THE CHAIRMAN: Again the question comes up there as to what change has taken place since.

Mr. MACK: The change that took place was founded on this, what my friend says is not the basis now; the Australian people said "Here now, you have go to buy".

MR. MACK: We are going to get that exact information.

" It is safe to say that a scrutiny of Japanese exports to the countries of the world would show that with the exception of countries from whom Australia requires to purchase her raw materials the balance of trade is preponderantly in favour of Japan. This is shown by the evidence with regard to the large number of countries throughout the world which have had to enact restrictive measures so far as Japanese imports are concerned. Until this situation arose in so many countries throughout the world there was no suggestion on the part of Japan that there should be a parity in the balance of trade between Japan and these countries concerned. If we only take [illegible] countries in which we have had [illegible]

"ive measures that Japan advanced the argument that there should be bilateralism in matters of trade between Japan and countries from whom she purchased raw materials. Taking one example, Exhibit 366 shows that the argument was put forward by Japan in suggesting there should be an equality in monetary value as between purchases of Egyptian cotton by Japan and exports of Japanese products to Egypt".

I have already referred to that. Then, the surtax--

" It is in evidence that the Government of Japan in contravention of Article VII of the Treaty of Commerce and Navigation between the United Kingdom and Japan to which Canada acceded on May 1, 1913, placed a surtax of 50% against exports from Canada of several lines of Canadian goods."

THE COMMISSIONER: Well, as usual in cases of these wars and other kinds of wars they say we began.

MR. KELLOCK: How?

THE COMMISSIONER: By treating their currency unfairly; they said that, didn't they?

MR. KELLOCK: They were complaining about the currency situation for one thing, but, my lord, they had no right to break a solemn international treaty.

THE COMMISSIONER: I say they say we broke it by taxing them on account of their falling currency. It is the old story. When two parties are together and the treaty falls apart each party blames the other for breaking it, and the Japanese blame us.

"Ive measures that Japan advanced the argument that there should be bilateralism in matters of trade relations and reciprocal Free Trade when purchased raw materials. Taking one example, exhibit 385 shows that the argument was put forward by Japan in suggesting there should be equality in monetary value as between purchases of Egyptian cotton by Japan and exports of Japanese products to Egypt".

I have already referred to that. Then, the surtax--

" It is in evidence that the Government of Japan in contravention of Article VII of the Treaty of Commerce and Navigation between the United Kingdom and Japan to which Canada acceded on May 1, 1913, placed a surtax of 50% against imports from Canada of several lines of Canadian goods."

THE COMMISSIONER: Well, as usual in cases of these wars and other kinds of wars they say we began.

MR. MACLEAN:

THE COMMISSIONER: By treating their currency unfairly; they said that, didn't they?

MR. MACLEAN: They were complaining about the currency situation for one thing, but, my lord, they had no right to break a solemn international treaty.

THE COMMISSIONER: I say they say we drove it by taking them on account of their falling currency. It is the old story. Then the parties are supposed and the treaty talks about each party blame the other for breaking it, and the Japanese blame us.

MR.KELLOCK: What is the foundation for the Japanese blaming us?

THE COMMISSIONER: I am not deciding the point, but you are assuming there they broke the treaty. They don't admit that; they say we broke it. They say we broke it by putting on this currency dumping duty.

MR. KELLOCK: By putting on the currency dumping duty?

THE COMMISSIONER: Yes, on their yen.

MR. McRUER: The special valuation of the yen. We would not let their goods come in.

MR. KELLOCK: I would have to examine the treaty before I could argue.

THE COMMISSIONER: I say you are passing judgment without examining the treaty. You are saying they violated the treaty. I say they say we violated the treaty.

MR. KELLOCK: My lord, my understanding is, and I may be wrong -- your lordship may have a view on it.

THE COMMISSIONER: I have no view, but I know what they are saying.

MR. KELLOCK: My understanding is that charge is baseless, that our Order in Council -- or our Statute which authorized in the case of countries which had depreciated currency a currency dumping duty, and the Order in Council against Japan specifically, that was not any breach of that treaty.

THE COMMISSIONER: Maybe it was not, but I am saying the Japanese say it was, and that they were then free to go and do what they did, put on this

Q. WHERE: What is the foundation for the

insurance binding us?

THE CHAIRMAN: I am not doubting the point,

but you are assuming there they broke the treaty.

They don't admit that; they say we broke it. They

we broke it by putting on this surtaxes taxing duty.

Q. WHERE: By putting on the surtaxes taxing

duty?

THE CHAIRMAN: Yes, on their goods.

Q. WHERE: The special valuation of the goods

to which not let their goods come in.

MR. WHERE: I would have to examine the treaty

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THE CHAIRMAN: I say you are passing judgment

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MR. WHERE: My lord, my understanding is, and

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THE CHAIRMAN: I have no view, but I know what

they are saying.

MR. WHERE: My understanding is that on the

is baseless, that our order in council -- or our

statutes would authorized in the case of assessing

duty, and the order in council contract upon possibly

ally, that was not any breach of this treaty.

THE CHAIRMAN: Maybe it was not, but I am

saying the Japanese say it was, and that they were

then free to go and do what they did, and on this

surtax.

MR. KELLOCK: That is my understanding, my lord, and unless there is anything in that charge then what they did was a direct breach of that treaty.

"This surtax became effective on July 20, 1935.

"This breach of the treaty was chiefly due to Japanese dissatisfaction particularly with the operation of Canadian depreciated currency legislation but it is to be noted that the operation of the currency dumping duty by reason of the proclaimed value of the yen being higher than the current exchange value was not discriminatory as against Japan but applied to all countries whose currencies were substantially depreciated.

On the same date, July 20, Canada reduced the proclaimed value of the yen from 49.85¢ to 41.51¢ and on July 22nd"-- operative August 5th -- "imposed the surtax of 33-1/3% on imports from Japan of goods produced in Japan. This situation existed until the coming into effect of Exhibit 401 on the 1st of January, 1936. The imposition of this surtax"--

THE COMMISSIONER: Pardon me; can anybody tell me the reason why the Government of Canada reduced the proclaimed value of the yen on that occasion from 49.85 to 41.51? It would appear to be a concession.

MR. KELLOCK: Yes, it was.

MR. HOSMER: In July, 1935 -- that was the first step --

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Burton.

Mr. FIELDING: That is my understanding, my lord, and unless there is anything in that change then what they did was a direct breach of that treaty.

"This surtax became effective on July 20, 1922.

"This breach of the treaty was clearly due to

[illegible]

operation of Canadian depreciated currency legislation but it is to be noted that the operation of the currency depreciation duty by reason of its proclaimed value of the yen being higher than the current exchange value was not discriminatory as against Japan but applied to all countries whose currencies were substantially depreciated.

On the same date, July 20, Canada reduced the proclaimed value of the yen from $1.85 to $1.84 and on July 22nd -- operative August 5th -- "imposed the surtax of 33-1/3% on imports from Japan of goods produced in Japan. This situation endured until the coming into effect of Exhibit 401 on the 1st of January, 1926. The imposition of this surtax"--

Mr. [illegible]: Excuse me; can anybody tell us the reason why the Government of Canada reduced the proclaimed value of the yen on that occasion from $1.85 to $1.84? It would appear to be a concession.

Mr. FIELDING: Yes, it was.

Mr. [illegible]: July, 1922 -- that was the first

Mr. —

THE COMMISSIONER: What is that?

MR. HOOPER: The Government -- after negotiating with the Japanese Government or the legation, the Government had offered this rate.

THE COMMISSIONER: Well, they did it.

MR. HOOPER: They did it.

THE COMMISSIONER: As a concession to Japan as part satisfaction of the complaint Japan was making.

MR. McRUER: Just in this regard, the article of the treaty which my friend complains that the Japanese Government broke --

MR. KELLOCK: Article seven?

MR. McRUER: Article seven reads as follows:

" Articles, the produce or manufacture of the territories of one High Contracting Party, upon importation into the territories of the other, from whatever place arriving, shall enjoy the lowest rates of customs duty applicable to similar articles of any other foreign origin.

No prohibition or restriction shall be maintained or imposed on the importation of any article, the produce or manufacture of the territories of either of the High Contracting Parties, into the territories of the other, from whatever place arriving, which shall not equally extend to the importation of the like articles, being the produce or manufacture of any other foreign country. This provision is not applicable to the sanitary or other prohibitions occasioned by the necessity of securing the safety of

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REPORTERS
OTTAWA - CANADA

The CHAIRMAN: What is the?

Mr. MORRIS: The Government — either responsible
ion the Dominion Government or the Legislation, the
Government had actual knowledge.

The CHAIRMAN: Well, they did it.

Mr. MORRIS: They did it.

Mr. [illegible]: As a consequence to learn as
much satisfaction of the complaint there was nothing.

Mr. [illegible]: Is that [illegible], the [illegible]
of the treaty which my friend complains that the
[illegible] —

Mr. [illegible]: [illegible]

Mr. MORRIS: Article seven reads as follows:

"Articles, the produce or manufacture of the
territories of one high contracting party, upon
importation into the territories of the other,
from whatever place arriving, shall enjoy the
lowest rates of customs duty applicable to similar
articles of any other foreign [illegible].

No prohibition or restriction shall be main-
tained or imposed on the importation of any
article, the produce or manufacture of the
territories of either of the high contracting
parties, into the territories of the other, from
whatever place arriving, which shall not equally
extend to the importation of the like article,
being the produce or manufacture of any other
foreign country. This provision is not applica-
ble to the sanitary or other prohibitions commonly

"persons, or of cattle, or of plants useful to agriculture."

Evidently what the Japanese maintained was this artificial valuation on the currency was a prohibition or restrictionx that was not placed on other countries--

MR. KELLOCK: Of course, that was not correct.

THE COMMISSIONER: Whether it is right or wrong, it is not a one sided question. There are two sides to it. Anyhow, Canada attempted to meet them part way by reducing the value of the yen from 49.85 to 41.51, and apparently that didn't have any effect.

MR. KELLOCK: No, the 50% Japanese surtax went on, and Canada put on their surtax of 33-1/3%.

THE COMMISSIONER: Then we put on the surtax of 33-1/3%, but did we put back the value of the yen to 49.85?

MR. KELLOCK: No.

MR. HOOPER: It was reduced to 39.5.

THE COMMISSIONER: Immediately?

MR. HOOPER: No.

THE COMMISSIONER: I am talking of the events of the summer of 1935.

MR. HOOPER: They wanted more than the value of the yen reduced.

THE COMMISSIONER: I know; I am not saying that. They must have because the step taken did not placate them and then Canada imposed the surtax of 33-1/3%. I am just saying did Canada leave the yen at 41.51?

MR. KELLOCK: Yes, my lord. I say --

"persons, or of cattle, or of plants useful to agriculture."

Evidently what the Japanese maintained was that artificial valuation on the currency was a protection or restriction that was not placed on other commodities.

Mr. [illegible]: Of course, that was not correct.

The CHAIRMAN: Perhaps it is right or wrong. It is not a cut dried question. There are two sides to it. Anyhow, Canada attempted to meet them partly by reducing the value of the yen from 49.85 to 41.51, and apparently that didn't have any effect.

Mr. [illegible]: No, the 50% Japanese duties were on, and Canada put on their duties of 33-1/3%.

The CHAIRMAN: Then we put on the surtax of 33-1/3%, but did we put back the value of the yen to 49.85?

Mr. [illegible]: No.

Mr. [illegible]: It was reduced to 36.5.

Mr. [illegible]: No.

The CHAIRMAN: I am talking of the crisis of the summer of 1935.

Mr. [illegible]: They wanted more than the value of the yen [illegible].

The CHAIRMAN: I know; I am not saying that. [illegible] I am just saying did Canada have the yen at 41.51?

Mr. [illegible]: No, [illegible] —

"This situation existed until the coming into effect of Exhibit 401 on the 1st of January, 1936. The imposition of this surtax by the Canadian government was not unique in Canadian tariff history as surtax provisions provided by section 7 of the Customs Tariff Act had been invoked by previous governments in like circumstances against other countries, notably in the case of Germany in the year 1903.

The members of the Silk Association were naturally prejudiced by the imposition of the surtax on Japanese goods by reason of the fact that it applied to Japanese raw silk"--

THE COMMISSIONER: That is where it pinched.

MR. KELLOCK: Yes, but we didn't squirm, my lord.

MR. McRUER: They squirmed hard enough.

MR. KELLOCK: We took it. I am just going to deal with that.

"-- and the Association first of all took steps to secure from the Government the exact details of the method of application of the surtax". That is the first thing.

"When these were clear the Association did successfully represent to theGovernment that the operation of the surtax should be extended to cover as far as possible products manufactured from Japanese raw materials in other countries and exported to Canada. The Association"--

THE COMMISSIONER: Pardon me a moment; let me see how you put that there. That is a very nice way of

officer of Exhibit 401 on the 1st of January, 1922.
The imposition of this surtax by the Canadian
government was not unique in Canadian tariff
history in surtax provisions provided by section
7 of the Customs Tariff act had been invoked by
previous governments in like circumstances against
other countries, notably in the case of Germany
in the year 1903.

The members of the silk association were
naturally prejudiced by the imposition of the
surtax on Japanese goods by reason of the fact
that it applied to Japanese raw silk"--

THE COURT: LORDS: That is where it pinched.

MR. MELLOOR: Yes, but we didn't argue, my Lord
--- [illegible] Lord Sumner.

MR. MELLOOR: We took it. I am just going to
deal with that.

"-- and the Association First of all took steps
to secure from the Government the exact details
of the method of application of the surtax".

That is the first thing.

"When these were clear the Association did succeed
fully represent to the Government that the
application of the surtax should be extended to
[illegible] or [illegible] [illegible]
from Japanese raw materials in other countries
[illegible] supplied to Canada. The Association"--

THE COURT: Listen at a moment, Lord [illegible]
[illegible] "[illegible]

saying it. You successfully represented. I was not sure whether you were saying what happened. I understand now.

MR. KELLOCK: That it should not be applied only or confined to direct imports.

THE COMMISSIONER: Your request was acceded to.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: I mean to say, you tuck it away nicely in the little word "successfully".

MR. KELLOCK: I don't know what your lordship means by the word "nicely".

THE COMMISSIONER: You did not say you represented; you say you successfully represented. That means a whole lot.

MR. KELLOCK: We did not ask to have it taken off; we asked to have it extended.

THE COMMISSIONER: And your request was granted.

MR. KELLOCK: "The Association also successfully represented that entry should be admitted of goods on bona fide contracts already made".

MR. McRUER: So you got it both ways.

THE COMMISSIONER: That was for your own raw silk.

MR. KELLOCK: Yes, my lord, and helped anybody who was importing fabric.

"At no time did the Association represent to the government that the surtax should be removed in spite of the serious position in which the silk mills were placed by reason of the sudden increase in the cost of their principal raw

"material, because the surtax on raw silk being the chief weapon the Canadian Government had against Japan it was not felt fair that the Government should be deprived of this weapon which it could use in the interests of those Canadian exporters who had lost the Japanese market by reason of the Japanese surtax on their products."

MR. McRUER: That is not consistent with the evidence.

MR. KELLOCK: That is the exact evidence.

MR. McRUER: The letter from Mr. Hallam sets it out and the letter from Mr. McDougall.

MR. KELLOCK: My friend will have to argue that when he comes to it.

THE COMMISSIONER: It is of no importance, anyway. We know what was done there. You are confessing your virtues.

MR. KELLOCK: My friend won't even let me have that virtue, my lord, and I submit that is the evidence and I have set it out. Then, with regard to Japanese trade practices.

"The breach of the Treaty by Japan"-- and I am clinging to that, my lord --"in the imposition of the surtax"--

THE COMMISSIONER: Pardon me; before you start that we will have a recess.

-- The Commission adjourned for a short recess.

-- On resuming.

Exhibit

"Mr Speaker, because the survey on the cost of living, the Select Committee, the Canadian Government and Parliament judgment it was not fair that the Government should be supplied at this moment which it could use in the interests of those domestic exporters who had lost the Canadian market by reason of the Japanese partner on trade preferences."

Mr. Ward: That is not consistent with the evidence.

Mr. Hull (K): That is the exact evidence.

Mr. Bennett (Grey-Bruce): Mr. Speaker, why is it out and the letter from Mr. Bogardus.

Mr. Hudson: My friend will have to argue that when he comes to it.

Mr. Hull (K): Mr. Speaker, I am not arguing. I have been doing very good friend. I am only reading your evidence.

Mr. Hudson: My friend won't, even let me have the virtue, by land, and I assert that is the evidence and I have set it out. Then, we are asked to imp trade practices.

"The lessons of the Treaty by Japan"-- and I am alluding to that, by land --"in the imposition of the market"--

Mr Speaker: Order No; before you start don't be allowed a reason.

-- the Commission discussed the a real lesson.

-- in Japan.

MR. KELLOCK: Paragraph 92, my lord.

" The breach of the Treaty by Japan in the imposition of the surtax against imports from Canada in 1935 is not without precedent on the part of Japan. With India limiting imports of piece goods from Japan (referred to in the evidence....)"-- and so on --"Japanese manufacturers manufactured 'fents' particularly in artificial silk goods for importation to India."

THE COMMISSIONER: What is that?

MR. KELLOCK: I explain that, my lord.

"Fents are subject to a much lower rate of duty than piece goods and are not subject to the quota restrictions. A fent ought to be an accident in the process of manufacture, being an end of imperfect goods. The evidence shows that the Japanese cut up perfect goods into fents in order to be able to export into India at a lower rate of duty and free from the quota restrictions".

MR. McRUER: What evidence is there?

MR. KELLOCK: That is in the evidence.

"Again, in the case of the Philippines, the Japanese ambassador"--

THE COMMISSIONER: That is not a breach of the treaty.

MR. KELLOCK: No, quite right; one is a governmental incident and the other is an action on the part of the citizens of the country.

THE COMMISSIONER: It is to avoid the tariff. India put a limitation upon imports of piece goods from

Mr. [illegible]: Proceed Sir, my lord.

The breach of the Treaty by Japan in the imposition of the anti-Sec against imports from Canada in 1928 is not without precedent on the part of Japan. The Japan imposing duties of [illegible] from Japan imposed by Australia [illegible] artificial milk goods for importation to India."

THE CONVENTIONS: What is that?

Mr. [illegible]: I [illegible], my lord.

"Goods are subject to a much lower rate of duty than other goods and are not subject to the quota restrictions. A fact ought to be an evidence in the process of manufacture, being an end of imperfect goods. The evidence shows that the [illegible] out up perfect goods into parts in order to be able to export into India at a lower rate duty and free from the quota restrictions".

Mr. MOTTON: What evidence is there?

Mr. KENNON: That is in the evidence.

"Lastly, in the case of the industries, the [illegible]

[illegible]

treaty.

Mr. KENNON: No, quite right; one is a government [illegible] of the citizens of the country.

THE CONVENTIONS: It is to avoid the tariff.

Japan, and the Japanese exporters got around that by shipping in these,what you call,fents.

MR. KELLOCK: Yes, and they got free from the quota and they got a lower rate of dty.

THE COMMISSIONER: That is the exporters; there is nothing there about the breaking of a treaty.

MR. KELLOCK: Quite right. Breaking a treaty is the action of a government. This is the action of the citizens of the country.

" Again, in the case of the Philippines, the Japanese Ambassador on 11th October, 1935 advised the Assistant-Secretary of State of the United States that for a period of two years, beginning August 1, 1935, the Japanese Association of Exporters of cotton piece goods to the Philippine Islands would voluntarily limit imports of Japanese piece goods into the Philippine Islands to a figure not exceeding 45,000,000 square metres annually.

Exhibits 390 and 391 show what took place after this agreement was entered into, the Japanese making shipments through Hong Kong and from mills in China and Hong Kong owned by Japanese",

and thus getting away from that restriction.

" Exhibit 375 and the evidence reveals a similar story following the gentlemen's agreement announced by the Japanese Ambassador to the United States on December 21, 1935. Immediately thereafter, namely, in January 1936, imports of Japanese

"cloths increased to 6,813,286 square yards as compared with 2,491,525 square yards in December, 1935. This resulted in the raising of the American tariff against these goods to the extent of 42%.

When one refers to Exhibit 126, which is a memorandum prepared by Mr. Hooper of the duty payable on the cloth there described when imported from Japan to Canada in March 1936, the selling price to the purchaser in Canada, that is, the invoice value, is 24¢ per pound. Referring to Exhibit 142, which is the Bulletin of the 10th of January, 1936, sent out by the Commissioner of Customs to the Customs Appraisers, there is attached to that Bulletin a sample of a similar fabric as that in Exhibit 126 but which was imported during 1935. Exhibit 142 says the value 'certified to' was approximately 8 yen for a piece of 30 yards. During 1935 there was a fixed value on importations of this fabric from Japan of $1.25 per pound. This would make it appear that between 1935 and March 1936 the price quoted for this fabric fell from 8 yen which, as Exhibit 142 shows, is equal to 69.6¢ per pound to 24¢, which shows either a remarkable fall in Japanese selling prices or that the Japanese exporter was dumping merchandise in Canada in March, 1936. It is not at all likely that there was any such difference in selling prices in that period as is shown by the disparity between 24¢ and 69.6¢. The question may well be asked

"clothing imported to 6,412,246 square yards as compared with 5,420,[illegible] square yards in December, 1936. This resulted in the relaxing of the customs tariff against these goods to the extent of 44%.

Then one refers to Exhibit 146, which is a memorandum prepared by i.e. Jaques of the early part on the cloth these considered when imported from Japan to Canada in March 1936, the selling price to the wholesaler in Canada, that is, the invoice value, is 24¢ per yard. Referring to Exhibit 147 which is the Bulletin of the 10th of January, 1936 sent out by the Commissioner of customs to the Customs Officers, there is presented a sample of a similar fabric on the 4 in Exhibit 146 but which was imported during June. Exhibit 146 says the value 'certified to' was approximately 3 yen for a piece of 36 yards. In 1936 there was a fixed value on importations of this fabric from Japan of 4.38 per yards. This would make it [illegible] 3 yen which, as Exhibit 146 shows, is equal to [illegible] per yard or 24¢. [illegible] reasonable fall in Japanese selling prices or the [illegible] Canada in March, 1936. It is not at all likely that there was any such difference in selling [illegible] in that period as is shown by the discrepancy between [illegible]. The [illegible]

"as to why at a time when there was a fixed valuation in effect the Japanese exporter would certify to a fair market value in Japan of 69.6¢ and a year later when there was no fixed value certify to a fair market value of 25¢. It is submitted little reliance can be placed on certificates of the Japanese exporters as to the fair market values of imports now coming into Canada either on consignment or otherwise."

And if one figures out the difference in the currency dumping duty, as between those two invoice values in those two years, it all gets down to a difference in the currency duty which would be paid in each case; in the case of the 70 cent value the currency dumping duty would be less than in the case of the 25 cent value because in the case of the 25 cent value it was limited to 50%. That is 62½¢. On the 70 cent figure the currency dumping duty would only be 55 cents, and if my arithmetic is correct there would be a possibility there of the Japanese exporter in 1935, at the time the fixed value was in effect, of getting more for his goods by invoicing them at a higher rate, and he got more in proportion than the customer, for these goods here, had to pay. If there was not a real difference between the two years in the value as between the 70 cents and the 25 cents, the only reason I can see for putting a higher value on in 1935, when it was a fixed value, was to get a little more money by reason of the operation of the currency dumping duty. It did cost the purchaser before

"as to why at a time when there was a fixed value in effect the customs authority would certify to a fair market value in excess of 55.6d and a year later when there was no fixed value certify to a fair market value of 55s. It is conceivable little reliance can be placed on certificates of the Customs authorities by to the fair market values or imports non certify like manner either as fair or not.

And if one figures out the difference in the customs duty, as between these two invoice values in these two years, it will note down to a difference in the customs duty which would be paid in each case; in the case of the 70 cent value the customs duty would have been then in the case of the 75 cent value because in the case of the 70 cent value it was limited to 25%. That is 5%. So the 70 cent duty, the customs duty duty would only be 5% ad valorem, and my attention is never there really be a possibility there of the customs auditor in 1926, at the time the fixed value was in effect, of getting more for his duty by invoicing them at a higher rate, nor he get more in proportion from the customs, for there could have to pay. If there was not a small difference between the two values to the value in excess the 70 cents and the 75 cents, the only reason I can see for putting a higher value on it later, when it was a fixed value, was to get the duty money by reason of the operation of the customs duty duty. It did not the necessary value

more but not as much more.

(page 16625 follows)

Then, my lord, I have the information now for the new Australian situation.

THE COMMISSIONER: What page of your Factum is it on?

MR. KELLOCK: Page 22, paragraph 56. This is the "The Textile Weekly, January 1st, 1937." I cannot put it in because I just borrowed the copy.

THE COMMISSIONER: What are you quoting from?

MR. KELLOCK: From the Textile Weekly of Jan. 1,1937.

THE COMMISSIONER: That is our own paper?

MR. KELLOCK: No, this is published in Manchester. It is on page 4, under the heading, "Australian-Japanese Trade Agreement."

> "Satisfaction is expressed on all sides at the completion of the seven months' negotiations between Australia and Japan, resulting in this week's new Trade Agreement. According to a Times cable from Melbourne the Agreemtn, which is to last 18 months, provides for the import into Australia of 102,500,000 square yards of piece goods a year, equally divided between cotton and rayon, exclusive of calico for bagmaking, which will enter duty-free as heretofore and has averaged 17,500,000 yards over the last three years."

Then, my lord, I have the information now for the new Australian situation.

THE CHAIRMAN: What page of your system is it Mr. KILLOCK: Page 48, paragraph 36. This is the "The Textile Weekly, January 1st, 1957." I cannot put it in because I just borrowed the copy.

THE COMMISSIONER: What are you quoting from? Mr. KILLOCK: From the textile weekly of Jan. 1,19

THE COMMISSIONER: That is our own papers

Mr. KILLOCK: No, this is published in Manchester. It is on page 4, under the heading, "Australian-Japanese Trade Agreement."

"Satisfaction is expressed on all sides at the completion of the seven months' negotiations between Australia and Japan, resulting in this week's new Trade Agreement. According to a Times cable from Melbourne the Agreement, which is to last 18 months, provides for the import into Australia of 108,500,000 square yards of piece goods a year, equally divided between cotton and rayon, exclusive of quilts for bedmaking, which will enter duty-free as heretofore and has averaged 17,000,000 yards over the last three years."

The settlement is just based on a total import of about 120,000,000 yards of cotton and rayon, which was the import in 1934, compared with 153,000,000 in 1935. Japan, for her part, will issue permits for the import of 800,000 bales of Australian wool in the 18 months' period ending June 30th, 1938, or at the rate of 533,000 bales a year, compared with 514,000 in 1934 and 750,000 in 1935. Each country immediately removes all special prohibitions against the others' exports, and Japan also withdraws the super-duties against certain Australian products. The new Australian duties are 4 d. a yard on rayon piece goods, and 1¼d on unbleached, 1½d unbleached, and ½d on printed, dyed, and coloured cotton piece goods, representing a substantial reduction of the emergency rates imposed on May 22nd, 1936, to preserve the British Preference."

THE COMMISSIONER: What page do you go back to?

MR. KELLOCK: I am going now to my friend's brief on this same subject.

THE COMMISSIONER: On what subject?

MR. KELLOCK: Trade with Japan, at page 6 of my friend's brief. I want to correct an error, if I may, on the previous page, which has already been referred to.

THE COMMISSIONER: Page 5?

MR. KELLOCK: Yes, my lord.

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Commercial Department
Washington
ADDRESS - COMMERCE

The estimated is just based on a total import of about 140,000,000 yards of cotton and rayon, which was the import in 1934, compared with 140,000,000 in 1933. Japan, for her part, will issue permits for the import of 40,000 bales of Australian wool in the 18 months' period ending June 30th, 1935, or at the rate of 530,000 bales a year, compared with 414,000 in 1934 and 700,000 in 1933. Japan country immediately removed all economic prohibitions against the cotton exports, but Japan also abrogates the most-favored-nation certain customs procedure. The new customs duties are 4 d. a yard on rayon piece goods, and 1d on embroidered, 1d unbleached, and 2d on printed, dyed, and colored cotton piece goods, representing a substantial reduction of the exorbitant rates imposed on top of duty, 1935, to preserve the British preference."

THE CHAIRMAN: Must page 40 you go back to the Mr. KNOX: I am going now to my friend's brief on this same subject.

THE CHAIRMAN: In what subject?

Mr. KNOX: Those also figure, at page 3 of my friend's brief. I want to correct an error, if I may, on the previous page, which has already been

INDEXING

My friend in the last paragraph says:

"Heretofore, in valuing goods....."

And that "heretofore" is prior tothe 1st of January, 1936, where the page starts, at the top of the page.

"Heretofore, in valuing goods imported into Canada from Japan, the yen was taken at a rate of exchange for duty purposes at 49.85 cents....."

As I just pointed out, that was 41.51 since the 29th of July.

MR. HOOPER: We corrected that.

MR. KELLOCK: And there is the same error on page 13 near the top, the 5th line.

And then if I may refer your lordship to page 8.

MR. McRUER: 49.85 was the price before the negotiations started.

MR. KELLOCK: At page 8, my lord, my friends sets out a comparative figure there as to 1930 -1935, fiscal years, "five years ended 1930, and five years ended 1935," as to certain exports from Canada to Japan, and I would like to give your lordship, if I may, the physical volume there in addition to the monetary value, which my friend has, because the physical volume shows that there was not nearly the change that the dollar values represent. Take in the case of "lead in pigs," the volume in the first column was 3,516,322 hundredweight, and in the next period the volume was 3,418,304 hundredweight. So that

My friend in the last minute, say:

"Nor before, in valuing goods....."

and that "heretofore" is prior to the 1st of January, 1939, where the page ends, at the top of the page.

"Heretofore, in valuing goods imported into Canada from Japan, the yen was taken at a rate of exchange for duty purposes at 49.85 cents...." as I just pointed out, that was 41.91 since the 1st July.

Mr. [illegible] [illegible].

Mr. Fulton: And there is the same error on page 13 near the top, the 9th line.

Then if I may refer your lordship to page 9.

Mr. Monture: 49.85 was the price before the negotiations started.

Mr. Fulton: At page 9, my lord, my friends set out a comparative figure there as to June -1938, fiscal years, five years ended 1938, and five years ended 1939," as to certain exports from Canada to Japan, and I would like to give your lordship, if I may, the physical volume there in addition to the monetary value, which my friend has, because the physical volume shows that there was not merely the change that the dollar values represent. [illegible]

there is very little difference in quantity.

In the case of timber, in the first period there was 511,747 thousand feet and in the second period 311,224 thousand feet.

Then in the case of wood pulp---

MR. McRUER: What about wheat?

MR. KELLOCK: You have analysed wheat in your Table 1. there.

MR. McRUER: Not in the same way.

THE COMMISSIONER: Wheat is put there in bushels?

MR. KELLOCK: In piculs.

MR. McRUER: Have not you got the unit of wheat?

MR. KELLOCK: You have analysed it in your Table.

MR. McRUER: No, not for the same purpose.

MR. KELLOCK: I have not got it prior to 1929.

MR. McRUER: The five-year period, 1929 ---

THE COMMISSIONER: Of course, wheat was a great deal dearer in the five-year period of 1929 than it was after.

MR. KELLOCK: In the case of wood pulp, the first period 4,659,000 hundredweight and in the second period 4,860,918 hundred weight. Your lordship will see that there was an actual increase there, though the dollar value looks the other way.

In the case of zinc spelter, the first period, 1,474,432 hundredweight and the second period 1,402,499 hundredweight. So that in the result there was a shrinkage on the wheat and timber but in the

there is very little difference in quantity.

In the case of timber, in the first period there was 511,747 thousand feet and in the second period 511,944 thousand feet.

Then in the case of wood pulp---

MR. MOLDOON: What about wheat?

MR. FRASER: You have analyzed wheat in your Table 1, Table.

MR. MOLDOON: Not in the same way.

THE COMMISSIONER: What is put zero in Canadian

MR. MOLDOON: In plants.

MR. FRASER: Have not you got the unit of wheat

MR. MOLDOON: You have analyzed it in your Table.

MR. MOLDOON: I have not got it prior to 1929.

MR. MOLDOON: The five-year period, 1925 ---

THE COMMISSIONER: Of course, wheat was a great deal deeper in the five-year period of 1929 than it was after.

MR. MOLDOON: In the case of wood pulp, the first period 4,099,080 hundredweight and in the second period 4,[illegible] hundredweight. [illegible] dollar value looks the other way.

[illegible]

1,475,452 hundredweight and the second period 1,405,499 hundredweight. So that in the first half there [illegible] shipments on the wheat and timber but in the

case of pulp there was an increase. In the case of lead and zinc the figures are very much the same. Now, my friend goes on on that page to set out a table on wheat imports into Japan from The Oriental Economist, which is Exhibit 668, and I have read to your lordship the paragraph which gives the explanation from the Japanese standpoint that that switch from Canada to Australia was due to price consideration, and with regard to the question of exchange which your lordship mentioned I have here a table of the value of the currencies - Canada and Japan and Australia, as a percentage on their gold parity in 1929, and I have it for the years 1930 and 1935. I have taken it from the Statistical Year Book of the League of Nations at pages 235 to 238. Now, in 1930 the Canadian figure is 99.8. That is percentage of the gold parity in 1929.

THE COMMISSIONER: That is, the Canadian dollar was worth 99.8 cents.

MR. KELLOCK: Yes, my lord. Japan 99.1 and Australia 94.2, and there is not a great deal of difference there. In 1931 Canada was 96.3, Japan 98, Australia, 72.2. In 1932 Canada was 88.1, Japan had slipped off to 56.4 and Australia had slipped off to 57.5. Now, that was the year in which the switch took place in wheat purchased from Canada to Australia. In 1933 Canada was 73.2. Japan had slipped off again to 40.4 and Austuralia, 54.2.

ROBT. BRYCE
Official Shorthand Writer
Toronto

5

10

15

20

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of pulp there was an increase. In the case of lead and zinc the figures are very much the same. Now, my friend goes on on that page to set out a table on wheat imports into Japan from the oriental economist, which is exhibit 888, and I have read to your lordship the passage which gives the explanation from the Japanese standpoint that that switch from Canada to Australia was due to price considerations, and with regard to the question of exchange which your lordship mentioned I have here a table of the rates of the currencies - Canada and Japan and Australia, as a percentage on their gold parity in 1929, and I have it for the years 1930 and 1933. I have taken it from the Statistical Year Book of the League of Nations at pages 255 to 258. Now, in 1930 the Canadian figure is 85.8. That is zero minus of the gold parity in 1929.

THE COMMISSIONER: That is, the Canadian dollar was worth 14.2 cents.

MR. KILLOCH: Yes, my lord. Japan 94.1 and Australia 94.2, and there is not a great deal of difference there. In 1931 Canada was 66.8, Japan [illegible], Australia [illegible]. [illegible] and 94.1, Japan had slipped off to 86.4 and Australia had slipped to 67.8. Now, that was the year in which the switch took place in wheat purchases from Canada to Australia. In 1932 Canada was 74.4, Japan [illegible]

In 1934, Canada was 60.2. Japan was 35.6 and Australia 49.1. In 1935, Canada 59.b. Japan 34.2 and Australia 47.4. So that the Japanese percentage kept closer company to Australia than to Canada throughout those years.

THE COMMISSIONER: You have not got 1936?

MR. KELLOCK: I am told it is not completed, my lord. Then in the paragraph at the foot of the same page my friend says that:

> "During the first six months of 1935 the Japanese Government made representations to the Canadian Government for more equitable trade relations with Canada, the contention being that Japan was buying more than twice as much from Canada as she was selling to Canada."
>
> Now, that may have been one element but the other element as already discussed, was their dissatisfaction with the currency legislation and they were also dissatisfied with the fixed valuations which were in effect at that time."

THE COMMISSIONER: I suppose they give those things as reason for the falling off.

MR. KELLOCK: I suppose but they are all linked together.

THE COMMISSIONER: These countries are always negotiating with one another more or less in this way. That is why they have trade legations and trade

ROBT. BRYDIE
CHARTERED STENOGRAPHER
OTTAWA - CANADA

In 1944, Canada was 89.1. Japan was 55.6 and Russia 44.1. In 1945, Canada 92.8. Japan 56.4 and Russia 47.4. So that the Japanese percentage was closer comparably to Russia than to Canada particularly since Russia was a neutral power.

THE COURT ADJOURNED: You have not got long?

MR. ALLEN: I am told it is not complicated, my lord. Does in the paragraph on the foot of the page my friend says that:

"During the first six months of 1945 the Canadian Government made representations to the Canadian Government for more equitable trade relations with Canada, its contention being that Japan was buying more than twice as much from Canada and selling to Canada."

Now, that may have been one element but the other element as already discussed, was their insubordination with the currency legislation and they were also dissatisfied with the trade relations which were in effect at that time."

THE CONFERENCE: I suppose they give those fair reasons for the Canadian Government.

MR. ALLEN: I suppose but they are all linked together.

THE PRESIDENT: Great consideration was given to manipulating this exchange and there was the trade [illegible] and Canadian trade [illegible]

commissioners - they have always reasons to give why they should get some concessions.

MR. KELLOCK: Yes, they would not be able to argue without that.

MR. McRUER: Even my friend's clients---

MR. KELLOCK: Even my friend has to have argument, and I am going to have something to say about that later.

On page 10 in the second paragraph, my friend says, about the middle of that second paragraph:

"The effect of this order-in-council, was to make the importations of Japanese products---"

THE COMMISSIONER: Where is that?

MR. KELLOCK: On page 10, about the middle. What my friend says in that paragraph is:

"When the Japanese Government imposed the surtax on these Canadian goods, the Canadian government retaliated with a 33 1/3% surtax on all goods imported into Canada of Japanese origin. This was made effective by order-in-council, P.C. 2108, dated July 22nd, 1935, as of the 5th of August, 1935."

Then comes where I commence before:

"The effect of this Order in Council, was to make the importation of Japanese products into Canada practically prohibitive, and to cut off trade ..."

THE COMMISSIONER: That is true.

MR. KELLOCK: Up to that point.

commission on - they have always reason to give any they should get some recommendations.

Mr. GILLMOR: Yes, they would not be able to raise without that.

Mr. Mcduff: Even my friend's clients---

Mr. GILLMOR: Even my friend has to have arguments, and I am going to have something to say about that. Let us go to 10 in the second paragraph, my friend was about the middle of that second paragraph:

"The effect of this order-in-council, was to make the importations of Japanese products--

THE CHAIRMAN: Where is that?

Mr. Mcduff: On page 10, about the middle. My friend says in that paragraph 1:

"When the Japanese Government imposed the export tax on these Canadian goods, the Canadian government retaliated with a 25 I/2% export tax on all goods imported into Canada of Japanese origin. This was made effective by order-in-council, P.C. 2108, dated July 20th, 1938, as of the 5th of August, 1938."

Then comes what I commence before:

"The effect of this order in Council, was to make the importation of Japanese products into Canada practically prohibitive, and to cut off those ..."

Mr. GILLMOR: Well, go on, go on.

Mr. Mcduff: Yes, I am going.

".....and to cut off trade in those Canadian products affected by the Japanese surtax...."

Now, it is not accurate - I mean I am merely quarrelling with my friend's language in tacking on the whole thing to the Canadian Order in Council. That had cut off the trade in Canadian products with Japan was the Japanese surtax which, of course, is quite obvious.

MR. McRUER: I never intended to say anything else.

MR. KELLOCK: No, I did not suppose you did.

Then my friend says in the next paragraph:

"The imposition of the surtax by the Government of Canada on all Japanese products had a detrimental effect on the Canadian silk weavers and the manufacturers of silk products."

And I have already discussed that. I think there is an additional feature there that to some extent Canadian mills were not absolutely dependent upon Japanese raw silk. There is evidence that, to some extent at least, they turned to Chinese raw silk at this time but what they were perhaps more worried about, or perhaps as much worried about as the increased cost of their raw silk was that that they feared a switch on the part of the buying public to artificial silk.

MR. McRUER: Which happened.

MR. KELLOCK: Because artificial silk is in increasing competition with natural silk and by making natural silk more expensive that accelerated the trend towards

".....and to cut off trade in those Canadian products shipped to the Japanese market....."

Now, it is not accurate - I mean I am merely quarrelling with my Friend's language in touching on the whole thing to the Canadian Order in Council. That had cut off the trade in Canadian products with Japan was the Japanese action which, of course, is quite obvious.

MR. HOWARD: I never intended to say anything else.

MR. FERGUSON: No, I did not suppose you did. Then my Friend says in the next paragraph:

"The imposition of the embargo by the government of Canada on all Japanese products had a detrimental effect on the Canadian silk weavers and the manufacturers of silk products."

and I have already discussed that. I think there is an additional feature there that to some extent Canadian mills were not absolutely dependent upon Japanese raw silk. There is evidence that, to some extent at least, they turned to Chinese raw silk at this time but what they were perhaps more worried about, or perhaps as much worried about as the increased cost of their raw silk was that that they feared a setback on the part of the buying public to artificial silk.

MR. MACKAY: Rayon.

MR. FERGUSON: Artificial silk is in another class altogether. Artificial silk has by reason of

artificial silk and it would give a company like the Celanese Company an advantage over the pure silk mills, and that is also what they feared there. My friend sets out on that page, on the following page, Mr. Hallam's letter, and on page 11, paragraph 5 of that letter just says that very thing: "The silk manufacturers are in intense competition with the manufacturers of artificial silk, and the surtax on raw silk would increase the cost of silk fabrics and upset the balance between the two types of fabric."

Then in the next paragraph which my friend sets out the letter says:

"Semi-manufactures, and manufactures produced from Japanese raw silk in other countries than Japan, were not subject to the surtax. This put Canadian manufacturers at a disadvantage with foreign manufacturers."

But as I pointed out in my Factum that was remedied to a certain extent by making the surtax apply to goods with 50% Japanese content, no matter from what country imported.

And in the second last paragraph on that page my friend says:

"Other views along this line are expressed in the letters contained in Exhibit No. 454. The matter was apparently repeatedly put before the Government, as shown in the letter from Mr. Hallam to Mr. Marx dated July 31st, 1935.

or artificial silk and it would give a company like the Chinese Company an advantage over the pure silk mills and that is also what they feared there. My friend sets out on that page, on the following page, as well, latter, and on page 43, paragraph 6 of that letter just says that very thing: "The silk manufacturers are in intense competition with the manufacturers of artificial silk, and any extra or new duty would increase the cost of silk fabrics and upset the balance between the two types of fabric."

Then in the next paragraph which my friend sets out the latter says:

"Anti-dumping, and manufactures produced from Japanese raw silk in other countries than Japan, were not subject to the duties. This put Canadian manufacturers at a disadvantage with foreign manufacturers."

But as I pointed out in my factum that was remedied to a certain extent by making the duties apply to goods with Japanese content, no matter from what country imported.

And in the second last paragraph on that page my friend says:

"Other views along this line are expressed in the Japanese memorandum in detail etc. etc.

The matters are temporarily considered by merits all governments, as means of our latter from Mr.

'We have put the question of Japanese raw silk before the Government by Telephone, telegram and memorandum.'"

And all I want to say about that is that if my friend suggests, as he did a moment ago, that we were asking for the removal at the expense of Canadian exporters of raw materials to Japan, I differ very much with my learned friend on that. My submission is that we did not do anything of the kind, but your lordship said you were not interested in that controversy.

My friend goes on at the foot of page 11:

"The export trade with Japan was virtually at a standstill...."

Now, that is only true with regard to the seven million dollars of Canadian trade affected by the surtax. My friend says himself at the top of page 10 of his brief:

"The exports of Canadian products of the character affected by the surtax amounted in value to $7,000,000 in 1934."

And the first sentence:

"Canadian products exported to Japan not affected by the surtax amounted in value to $9,482,447. in the year 1934."

THE COMMISSIONER: Did the Japanese surtax apply only to certain products?

MR. KILLACK: Yes, my lord. My friend sets it out.

THE COMMISSIONER: What class of products were not affected?

"... as there can be question of
Japanese raw silk enters the Government by
telephone, telegram and memorandum."

All I want to say about that is that my friend
[illegible], as he said a moment ago, has as true sayings
for the removal of the Japanese of Canadian ancestry
of raw material to Japan, I differ very much with my
learned friend on that. My knowledge is that we did
not do anything of the kind, but your Lordship said
you were not interested in that one anyway.

My friend goes on at the foot of page 13:

"The export trade with Japan was virtually at a
[illegible]..."

Now, that is only some $[illegible] related to the seven million
dollars of Canadian trade affected by the action.
My friend says himself at the top of page 12 of his
brief:

"The exports of Canadian products of the character
affected by the orders amounted in value to
$[illegible],000 in 1941."

And the final paragraph:

"Canadian products exported to Japan not
affected by the orders amounted in value to
$[illegible],000 in the year 1941."

[illegible]: Did the Japanese market supply only
[illegible] products?

Mr. FILLMORE: Yes, my lord. My friend sets it out,
[illegible]: What other [illegible] products were
not affected?

MR. KELLOCK: I know better the ones that were affected, such as pulp---

MR. McRUER: On page 9 the ones ---

MR. KELLOCK: My friend on page 9, at the foot of the page, has wheat, wheat flour,---

THE COMMISSIONER: Yes, I remember that.

MR. KELLOCK: That is about half in value of the exports of Canada.

THE COMMISSIONER: Yes, I recollect.

MR. KELLOCK: And if your lordship wants further reference it is in Exhibit 506, and page 13 in the second paragraph which starts on that page my friend says that:

> "By reason of the treaty negotiated with the United States of America which became effective on the 1st of January, 1936, minimum valuations for duty purposes fixed under Section 45 of the Customs Act on certain textilegoods imported into Canada were no longer effective against some countries having the benefit of the Most Favoured Nation Treaty. This removed the fixed valuation on artificial silk fabrics of $1.25 a pound when imported from Japan."

My only comment there was that not only did that come about by reason of the treaty with the United States but by reason of the direct treaty with Japan itself, in Exhibit 401.

I have been handed appraisers' bulletin No. 4459

MR. [illegible]: I know better the order such such
effective, such as [illegible]---

[illegible] --

MR. [illegible]: My friend on page 9, at the [illegible] of
the page, has stated, where [illegible],---

THE COURT [illegible]: Yes, I remember that.

MR. [illegible]: That is about half in value of the
exports of Canada.

THE COURT [illegible]: Yes, I remember.

MR. [illegible]: And if your Lordship wants further
reference it is in exhibit 600, and page 15 in the
[illegible] [illegible] [illegible] [illegible] [illegible] by [illegible]
[illegible] [illegible]:

"By reason of the treaty negotiated in the
United States of America which became effective
on the 1st of January, 1935, minimum valuations
for duty purposes fixed under section 42 of the
customs act on certain textilegoods imported
into Canada were no longer effective against
some countries having the benefit of the most
favoured nation treaty. This removed the first
valuation on artificial silk fabrics of $1.40 a
pound when imported from Japan."

My only comment there was that not only did that come
about by reason of the treaty with the United States
but by reason of the direct treaty with Japan itself,
in exhibit 401.

which shows ---

THE COMMISSIONER: What date?

MR. KELLOCK: 27th December, 1935.

MR. HOOPER: That is in the evidence.

MR. KELLOCK: It refers to the fixed valuation under Section 43 which were removed by reason of the treaty with the United States, and Appraisers' Bulletin, No. 4462, of the same date, has an additional list of articles with respect to which fixed valuations under Section 43 were removed by reason of the Japanese Treaty. So that when you mention one you have not exhausted the whole thing. There were certain valuations removed under the one and certain under the other.

MR. McRUER: Yes, but the $1.25 a pound was under the American.

MR. KELLOCK: That is correct., and it was also particularly provided for in the Treaty itself, Exhibit 401, which is the letter of the Prime Minister to the Honourable Mr. Kato.

Then, my lord, I just want to refer your lordship to a statement of my friend on page 14 of his Brief, in the last paragraph, the last sentence, where my friend says:

> ".....notwithstanding the fact that rayon fabrics sell at a higher price in the United States of America than in Canada....."

I think that is important. My friend lays so much

ROBT. BRYDIE

while away ---

MR. [illegible]: [illegible]

MR. [illegible]: [illegible]

MR. HOGGER: That is in the evidence.

MR. MILLICK: It refers to the fixed valuation under section 46 which were removed by reason of the treaty with the United States, and a subsequent valuation, Mr. [illegible], of the [illegible] have, for my [illegible] list of articles with respect to which fixed values under section 3 were removed by reason of the treaty. So that when you mention that you have not examined the whole thing. There were certain valuations removed under the one and certain under the other.

MR. HOGGER: Yes, but one [illegible] a round use [illegible] the American.

MR. [illegible]: That is correct, and it was also particularly provided for in the treaty itself, [illegible] act, which is the letter of the [illegible] to the Honourable Mr. [illegible].

Then, my lord, I just want to refer your lordship to a statement of my friend on page 14 of his brief, in the last paragraph, the last sentence, where my friend says:

'.....notwithstanding the fact that [illegible] will at a higher price in the United States [illegible] at [illegible] like it [illegible].....'

[illegible]

emphasis on the consumer but notwithstanding any duties we may have affecting rayon fabrics, the price to the consumer in the United States is higher than to the consumer in Canada.

MR. McRUER: Yes, but there is a different scale of wages and hours of labour over there.

MR. KELLOCK: Well, I cannot deal with them all. That is a fact, I will deal with later on. My friend in the same paragraph says that:

> "Exhibit No. 525 shows the importations of rayon fabrics into the United States of America from Japan for the years 1932 to 1936."

Now, I just want to point out that so far as that Exhibit covers 1936 it is only for the first two months of the year. Then at page 17 my friend refers to Exhibit 277 which contains these statements set out on this page and the preceding page, and my friend refers to statement of Mr. Marx, that "due to the uncertainty of the Japanese textile situation, his customers were not placing their requirements, especially the staple industries such as the underwear manufacturers."

> "----the result of which was the necessity of shutting his mill down completely, as well as two other mills of which he was the greatest user of their production. This forced out of employment between 1000 and 1400 people."

Now, the evidence - and I want to refer your lordship to that for a moment, page 4409, commencing at line 18,

duties we may have affecting rayon fabrics, the price to the consumer in the United States is higher than to the consumer in Canada.

Mr. McLURE: Yes, but there is a different scale of wages and hours of labour over there.

Mr. McLEOD: Oh, I cannot deal with them all. That is a fact, I will deal with later on. My friend in the same paragraph says that:

"Exhibit No. 326 shows the importations of rayon fabrics into Canada from Japan for the years last to hand."

Now, I just want to point out that so far as this exhibit covers 1935 it is only for the first two months of the year. Then at page 17 my friend refers to Exhibit 327 which contains three statements set out on this page and the preceding page, and my friend refers to statement of Mr. Mark, that "due to the uncertainty of the Japanese textile situation, his customers were not placing their requirements, especially for [illegible] as the manufacturer manufacturer."

"----the result of which was the [illegible] completely, as well as two other [illegible] employment between 1000 and 1200 people."

Now, the witness - and I want to refer you to [illegible] Mr. [illegible], page 1487,

my friend challenges the accuracy of that statement of Mr. Marx.

THE COMMISSIONER: Is not it a fact - according to my recollection Mr. Marx said that the closing down that he had done was in December.

MR. KELLOCK: December 14th.

MR. McRUER: Before this action was taken.

THE COMMISSIONER: For two days.

MR. KELLOCK: No, until the 18th of January.

MR. McRUER: There is no evidence of that.

THE COMMISSIONER: My recollection is at Three Rivers, - I remember I was a little surprised to hear that he closed for a few days in December.

MR. KELLOCK: My friend is right when he says that the evidence does not cover January 18th, but I have taken it up with Mr. Marx, and his mill was closed from the 14th of December to the 18th of January.

MR. McRUER: No, there was no suggestion of that made when we examined Mr. Marx.

THE COMMISSIONER: I am very much surprised to hear you say that.

MR. KELLOCK: Mr. Berry checked it up with Mr. Marx.

THE COMMISSIONER: That is new to me.

MR. McRuer: Said here closed two days.

MR. KELLOCK: Who said that?

MR. McRUER: The Counsel.

MR. KELLOCK: That is a statement by Mr. Geoffrion.

THE COMMISSIONER: No, Mr. Marx gave evidence

my friend challenges the accuracy of that statement of Mr. Mann.

THE COMMISSIONER: Is not it a fact - according to my recollection of Mr. Mann said that the closing down that he had done was in December.

Mr. [illegible] January [illegible]:

Mr. [illegible] Before this strike was [illegible].

THE COMMISSIONER: Yes we have.

Mr. KELLOCK: No, until the loss of January.

Mr. MORDEN: There is no evidence of that.

THE COMMISSIONER: My recollection is at large anyway, - I remember I was a little surprised to hear that he closed for a few days in December.

Mr. KELLOCK: My friend is right when he says that the evidence does not cover January 1919, but I have taken it by [illegible] Mr. Mann, and it will see closed from the 16th of December to the 10th of January.

Mr. MORDEN: No, there was no suggestion of that made when we examined Mr. Mann.

THE COMMISSIONER: I am very much surprised to hear you say that.

Mr. KELLOCK: Mr. Mann cleared it up with Mr. [illegible]

THE COMMISSIONER: That is new to me.

Mr. [illegible] Will have [illegible] for.

Mr. [illegible] the [illegible]

Mr. [illegible] the [illegible].

Mr. [illegible] That is [illegible] W. [illegible]

in Louseville.

MR. KELLOCK: Yes, but he does not say anything about it there. I have searched the evidence and I cannot find it, and the only thing my friend can refer--

THE COMMISSIONER: It may have been Mr. Pinatel who said it, his manager there. I remember that, when we came to find out what occurred, it was closed some time in December. It was Mr. Pinatel gave that evidence.

MR. McRUER: Never any suggestion by workmen or any other person that the mill was closed for a month.

THE COMMISSIONER: Yes, that would be a month. A great many people employed, 1000 to 1400

MR. KELLOCK: I will look it up, it is in this volume. The reason I went to Mr. Marx was because I could not find it in Mr. Marx'evidence and no record but just remarks interjected into the evidence by Mr. Geoffrion.

MR. McRUER: It was not Mr. Geoffrion. That is a mistake. It must have been Mr. Lanctot.

MR. KELLOCK: Mr. Berry says that he was there.

MR. BERRY: This evidence was taken in Montreal, that page you refer to,

THE COMMISSIONER: Look up Mr. Pinatel's evidence and I would be very much surprised to learn that that mill was closed for a month.

MR. KELLOCK: My lord, I will look it up tonight.

MR. McRuer: We asked them about Japanese competition and Mr. Marx was very definite and said

that he did not experience any.

THE COMMISSIONER: You say you never found any evidence about it at all?

MR. KELLOCK: No, I said the evidence showed the mill was closed but I could not find in Mr. Marx' evidence where he gave the period.

THE COMMISSIONER: I think if you look up Mr. Pinatel's evidence you will find that.

MR. KELLOCK: Very well, my lord, I will do that tonight. What I was coming to was that myfriend challenges the accuracy of what Mr. Marx says in Exhibit 277, where my friend sets it out on page 17, and my friend does that by saying that the deliveries of the associated Textiles were 200,000 yards in January and 400,000 yards in April, and he argues from thatthat Mr. Marx' statement is not correct.

THE COMMISSIONER: Just a minute, I am becoming involved - you are going on to Dominion Textile?

MR. KELLOCK: No, it is Mr. Marx, Associated Textiles of Canada, my lord. My friend argues that the statement which is attributed to Mr. Marx at the top of page 17 of his brief, where he says about closing down and blames it to some extent on the Japanese Textile situation, my friend says that is not right because in January the deliveries of the Associated Textiles were 200,000 yards, 400,000 yards in April. Now, what Mr. Marx says at pages 4409 to 4411, I have analysed his evidence, and I can read it if necessary,

that is all my questions Mr.

THE COURT REPORTER: You say you never found any evidence about it at all?

MR. KELLOCK: No, I said the evidence showed the mill was closed but I could not find in Mr. Marx' evidence where he gave the period.

THE COMMISSIONER: I think if you look up Mr. Pinsted's evidence you will find that.

MR. KELLOCK: Very well, my lord, I will do that tonight. What I was coming to was that my friend challenges the accuracy of what Mr. Marx says in Exhibit 277, where my friend sets it out on page 17, and my friend does that by saying that the deliveries of the associated Textiles were 200,000 yards in January and 400,000 yards in April, and he argues from that that Mr. Marx' statement is not correct.

THE COMMISSIONER: Just a minute, I am somewhat involved - you are going on to Dominion Textile?

MR. KELLOCK: No, it is Mr. Marx, Associated Textiles of Canada, my lord. My friend argues that the statement which is attributed to Mr. Marx at the top of page 17 of his brief, where he says about closing down and closing it in some manner at the Dominion Textile situation, my friend says that is not right because in January the deliveries of the Associated Textiles were 200,000 yards, and yards in April.

Now, that Mr. Marx says at some time in April, I was

he says that orders in January and February were not beingreceived, and the fact that deliveries were madd in January or February would have nothing to do with that fact because deliveries made in January or February or even on to April would certainly be of orders obtained prior to that and sometimes prior to that. Mr. Marx was not complaining of his deliveries or saying that he closed his mill on account of the fact that his deliveries were off but he said that orders in January and February were not being received.

Now, the United States Treaty which, as just discussed, affected the situation as between Japan and Canada, was made on the 15th of November, 1935 and that provided for the removal of fixed valuation as between Japan and Canada. Now, that, therefore, was published on the 15th of November and when Mr. Marx closed his mill on the 14th of December the whole Japanese situation was known to him. The fact that the importation from Japan would start on the 1st of January, and of course the Japanese would start to ship so that their importations would arrive here after 4th of January ---

MR. McRUER: The American Treaty did not provide for the removal of fixed valuations against Japan. The Japanese difficulty was not settled then.

MR. KELLOCK: I thought we had just agreed as my friend says in his brief ---

MR. THE COMMISSIONER: I know but you are thinking

ROBT. BRYSIE
CERTIFIED STENOGRAPHER
TORONTO - CANADA

be sure that orders for flour and tobacco were cancelled, and the fact that deliveries were made in January or February would have nothing to do with that because Kalyuzhny was in Japan in February or even on to April would certainly be of orders obtained prior to that and sometimes prior to that. Mr. Amix was not complaining of his being re-at saying that he closed his mill on account of the fact that his deliveries were off but he said that orders in January and February were not being received.

Now, the United States Treaty which, as just discussed, affected the allocation as between Japan and Canada, was done on the 14th of November, 1940 and provided for the removal of fixed valuation as between Japan and Canada. Now, that, therefore, was published on the 14th of November and when Mr. Amix closed his mill on the 14th of December the whole Japanese situation was known to him. The fact that the importation from Japan would start on the 1st of January, and of course the Japanese would start to ship so that their importations would arrive here after 6th of January --

Mr. Monson: The American Treaty did not provide for the removal of fixed valuations against Japan. The Japanese difficulty was not settled then.

Mr. Ilsley: I thought he had just agreed is they closed down to the end ---

anything done with the United States automatically applied to Japan.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: How is it that the Canadian manufacturers who were alarmed with what was going on with Japan did not go to see the Government until January 14th?

MR. KELLOCK: I don't know.

THE COMMISSIONER: That is the fact.

MR. KELLOCK: The interview was the 14th of January.

THE COMMISSIONER: They are prompt to act and they deserve commendation for that, but it was only on Jamary 14th that they went there.

MR. KELLOCK: For the Government appointment.

THE COMMISSIONER ; That they had the meeting. Was not Mr. Marx one at the meeting?

MR. KELLOCK: Yes.

THE COMMISSIONER: And Mr. Gordon?

MR. KELLOCK: Yes.

THE COMMISSIONER: Do you mean to tell me that the time they were at the meeting Mr. Marx had already closed his mill and closed for a month?

MR. KELLOCK: Yes, on the 14th of December.

MR. McRUER: Before treaty had been settled with the Japanese Government.

THE COMMISSIONER: And still closed on the 14th of January.

MR. KELLOCK: Still closed on the 14th of January,

[illegible]ing done with the United States automatically applied to Japan.

Mr. WILLIAMS: Yes, my lord.

THE COUNCIL: How is it that the Japanese manufacturers are concerned with what was going on when Japan did not go to war the Government until January 1 1941?

Mr. [illegible]: I don't know.

THE COURT: That is the fact.

Mr. KEN CO: The interview was the 14th of January.

THE COURT: They are prompt to act and they concerte commendation for that, but it was only on January 14th that they met there.

Mr. [illegible]: For the Government [illegible].

THE COURT: Then they had the meeting.

Was not Mr. Matsuoka at the meeting?

Mr. WILLIAMS: Yes.

THE COURT: And Mr. Yoshida?

Mr. KEN CO: Yes.

THE COURT: Do you mean to tell me that [illegible] they were at the meeting Mr. Matsuoka [illegible] and closed for a month?

Mr. WILLIAMS: Yes, on the 1st [illegible].

Mr. KEN CO: [illegible] Japanese Government.

THE COURT: The Pacific closed on the 1st of January.

Mr. WILLIAMS: Pacific closed on the 1st of January.

if my instructions are correct.

THE COMMISSIONER: I am surprised at that. That may be right.

MR. KELLOCK: So that you see, my lord, the order of events was this: On the 15th of November agreement was made with the United States which would provide for the removal of these fixed valuations against Japan as well on the 1st of January and ---

THE COMMISSIONER: Yes, but is that a fact? That does the letter of the Prime Minister to the Japanese Ambassador say?

MR. KELLOCK: That is which letter? It is the wrong letter I am referring to.

THE COMMISSIONER: You see, the effect of what was done with the United States was to give the Japanese the same treatment in respect to Section 43. Now, let us look at the letter written by the Prime Minister of Canada to the Japanese Minister. It is here some place.

MR. KELLOCK: Page 3 that is, my lord.

THE COMMISSIONER: Now, does he deal with that Section 43 there?

MR. KELLOCK: Yes, he does. This was on December 26th, 1935, my lord.

THE COMMISSIONER: Yes, I know but it was long after the American ---

MR. KELLOCK: Yes, paragraph 4 of that letter, page 4.

if my instructions are correct.

THE COMMISSIONER: I am surprised at that.

That may be right.

MR. KELLOCK: So that you see, my lord, the order of events was this: on the 15th of November negotiations were made with the United States which could provide for the removal of these fixed voluntions residents upon as well as the 1st of January and ---

THE COMMISSIONER: Yes, but is that a fact that does the letter of the prime minister to the Japanese Ambassador prove?

MR. KELLOCK: That is which letter? It is the strong letter I am referring to.

THE COMMISSIONER: You see, the effect of what was done with the fixed notice was to give the Japanese the same treatment in respect to deportion as, now, let us look at the letter written by the prime minister of Canada to the Japanese Minister. It is more some place.

MR. KELLOCK: Page 3 that is, my lord.

THE COMMISSIONER: No, come on and deal with that matter in order.

MR. KELLOCK: Yes, he does. This was on December 20th, 1940, my lord.

THE COMMISSIONER: Yes, I know but it was long after the negotiations ---

MR. KELLOCK: Yes, paragraph 4 of that letter.

THE COMMISSIONER: He deals with that wholly there as subject between Japan and Canada. He does not say that he has already done it by negotiating with the United States. He says:

"The values established under authority of Section 43 of the Customs Act will be cancelled on January 1st, 1936, on an extensive list of commodities."

I am at one with my friend with regard to what I am just saying with regard to the United States Treaty. My friend sets it out at page 13, second paragraph. He says:

"By reason of the treaty negotiated with the United States of America which became effective on the 1st of January, 1936, minimum valuations for duty purposes fixed under Section 43 of the Customs Act on certain textile goods imported into Canada were no longer effective against countries having the benefit of Most Favoured Nation Treaty. This removed the fixed valuation on artificial silk fabrics of $1.25 a pound when imported from Japan."

THE COMMISSIONER: Well, it may be.

MR. KELLOCK: So that they both cover the same ground, my lord.

THE COMMISSIONER: Here, though, it is particula quarrel with Japan, with each country accusing the other of breaking the treaty, and Japan first acted

THE CHAIRMAN: He feels that wholly this subject between Japan and Canada. He does not say that he has already made it by negotiating with the United States. He says:

"The matters co-ordinated under authority of Section 52 of the Act are not will be concerned on Schedule, 1930, or an exclusive list of commodities."

I met at one with my friend with regard to what I am just saying with regard to the United States treaty. My friend says it out at page 12, second paragraph.

"By reason of the treaty negotiated with the United States of America which bound effective on the 1st of January, 1935, Canadian manufacturers of the Dominion not on certain textile goods imported into Canada were no longer effective against countries having the benefit of Most Favoured Nation Treaty. This removed the final validation on artificial silk fabrics of $1.50 a pound when imported from Japan."

THE CHAIRMAN: Well, it may be.

Mr. FARRAND: So that they been cover the same [illegible] as here.

THE CHAIRMAN: Sure, though, it is [illegible]

by imposing surtax and then there was some concession attempted by Canada which was not accepted and then Canada retaliates by imposing a surtax and that state of affairs left them, it seems to me, up in the air until this letter was written.

MR. KELLOCK: Except this, my lord, that the treaty with the United States---

THE COMMISSIONER: The letter says:

"Sir:

I have the honour to inform you that the Canadian Government, in accordance with its general policy respecting trade and tariff matters, has decided to make the following modifications in its Customs regulations:-"

MR. KELLOCK: Well, of course when they came to make a direct treaty with Japan --

THE COMMISSIONER: "The values established under authority of Section 43 of the Customs Act will be cancelled...." looked there as if meant ---

MR. KELLOCK: It simply covered the same ground which was already the result of the United States Treaty.

THE COMMISSIONER: However it came about, I am still surprised to hear that at the time of this meeting of January 14th, which was the first time the industry met the Government, that among them sitting there was Mr. Barx, and that he had already closed

By imposing surtax and then there was some consensus attempted to secure which you had mentioned yet some reasons relations of imposing a surtax and that price of articles left them, it seems to me, up in the air until this letter was written.

MR. MILLER: Does it imply, my lord, that the trade with the United States---

THE COMMISSIONER: The letter says:

"I have the honour to inform you that the Canadian Government, in accordance with its general policy respecting trade and tariff matters, has decided to make the following modifications in the Canadian regulations:-"

MR. MILLER: Well, of course when they came to make a direct treaty with Japan --

THE COMMISSIONER: "the values actually used under authority of section 43 of the Customs Act will be abrogated...." looked there as if meant ---

MR. MILLER: It clearly removed the free trade which was already the result of the United States tariff.

THE COMMISSIONER: However it came about, I am still surprised to hear that at the time of this meeting of January 4th, which was the first time the Canadian and the Government, that young man sitting

his mill and thrown a thousand or fourteen hundred people out of employment.

MR. KELLOCK: As early as 14th December.

THE COMMISSIONER: And still out on the 14th of January, according to you. That may be the evidence but it is a surprise to me to hear that it is.

MR. KELLOCK: In Exhibit 277, which my friend is dealing with, Mr. Marx there said that he had shut down his mill.

THE COMMISSIONER: I know he does.

MR. KELLOCK: All I wanted to point out to your lordship, aside from this new element, was the fact that treaty relations with Japan were going to be on a very different basis, became evidentwhen the United States treaty was signed on the 14th of November. Now, Mr. Marx knew then all what was going on in the trade. That is, there was a feeling of expectancy there was going to be much cheaper goods, and his evidence is that in view of that fact, coupled with the slowing up, as I recall, the slowing up in deliveries, he decided that the thing to do was to close his mill and that was done on the 14th of December. But it is not no answer and it does not establish that what Mr. Marx says in exhibit 277 as the reason for closing his mill and in relation to the closing of the mill and the new situation that was going to develop with regard to imports from Japan, it is no answer, as my friend admits, by showing that

his mill and turn a thousand or fourteen hundred people out of employment.

MR. HILLSON: As early as 1924 however.

THE COURT: And still one of the jobs of industry, according to you. That may be the evidence but it is a surprise to me to hear that it is.

MR. HILLSON: In Exhibit 277, which my friend is dealing with, Mr. Hurx there said that he had shut down his mill.

THE COURT: I know he does.

MR. HILLSON: All I wanted to point out to your lordship, made from this new element, was the fact that treaty relations with Japan were going to be on a very different basis, I mean evidently the United States treaty was signed on the 18th of November, Mr. Hurx knew then all that was going on in the trade. That is, there was a feeling of expectancy where was going to be much cheaper goods, and his evidence is that in view of that fact, coupled with the slowing up, as I recall, the slowing up in deliveries, he decided that the thing to do was to close his mill and that was done on the 12th of September. But it is not no answer and it does not eliminate that what Mr. Hurx says in Exhibit 277 as the reason for closing his mill was in relation to the closing of the mill and the non-attention that was paid to having the mill report to Derwin from Japan.

his deliveries in January were 200,000 yards and April 400,000.

THE COMMISSIONER: Because the orders were long before.

MR. KELLOCK: Yes. That is the only point.

MR. McRUER: The suggestion was, though, that people were cancelling their orders.

THE COMMISSIONER: Yes, we heard that I think from Mr. Dawson that people gave orders but would not specify them later on waiting to see what they could get from the Japanese mills. Apparently those who gave orders to Mr. Marx came through, to that extent anyhow.

MR. McRUER: Mr. Marx was asked about Japanese competition specifically at page 4412:

"Q. You have not found any Japanese goods that are competing with you?

A. At the present time in Canada?

Q. Yes? A. No, sir."

MR. KELLOCK: Well, my friend has referred to the evidence. I want to give your lordship the evidence I am speaking about, and that is not on it. It is at page 4409, line 18. This is Mr. Marx examined by my friend.

"Have you suffered from external competition at all? A. External competition?

Q. Yes. A. Up until the present moment only by the fear and possibility that there

his daily wire in January was 8,000 yards and will be.

THE COMMISSIONER: Because the orders were long overdue.

MR. KILLICK: Yes. That is the only point.

MR. MORRIS: The suggestion was, though, that people were cancelling their orders.

THE COMMISSIONER: Yes, we heard that. I think Mr. Hewson that people gave orders but would not specify them later on waiting to see what they could get from the Russian mills. Consequently there would have orders to Mr. Marx come through, to that extent anyway.

MR. MORRIS: Mr. Marx was asked the cross-examination specifically at page 4414:

"Q. You have not found any Japanese goods that are competing with you?

A. At the present time in Canada.

Q. Yes? A. No, sir."

MR. KILLICK: Well, my friend has referred to the evidence. I want to give your Lordship the evidence I am speaking about, and that is not on it. It is not page 4414, line 10. This is Mr. Marx examined by my friend.

"Have you noticed Jap cotton goods?

A. Many

Q. Yes. Is well in Canada?

may be goods coming into the country. As for actual proof of shipments of goods which have come in I know of none, but it has retarded business on our part in the months of January and February.

Q. I suppose you are referring to Japanese goods? A. Japanese and others, mostly Japanese.

Q. It is the fear that they will come in?

A. That is right.

Q. I suppose likely a great deal of the talk that has gone on about Japanese competition would make purchasers think there were possibilities they were going to be able to buy Japanese goods at lower prices than yours? A. Yes, and it retarded the purchasing.

Q. Is it not a fact that you have found evidence of that, that people have held back purchasing orders hoping to buy Japanese goods which they were not able to buy? A. Correct.

Q. And I suppose a great deal of this talk that went into the newspapers about the closing of a mill down in Sherbrooke and that sort of thing would inflame the people to feel that they were going to get something in the way of Japanese goods?

A. We were already shut down at that time."

That would be at the time the Sherbrooke mill shut down.

"Q. You were shut down? A. Yes.

Q. What for? A. Well, we were afraid of the

[illegible] in the month. In the normal course of shipments of goods which have come in I know of none, but it has retarded business on our part in the months of January and February.

Q. I suppose you are referring to Japanese goods? A. Yes, Japanese goods, mostly Japanese.

Q. It is the fact that many will come for Christmas.

A. Yes, Christmas.

Q. I suppose likely a great deal of the trade that has gone to some Japanese competition would make purchasers think there were possibilities they were going to be able to buy Japanese goods at lower prices than years? A. Yes, and it retarded the purchasing.

Q. Is it not a fact that you have found evidence of that, that people have held back purchasing orders hoping to buy Japanese goods when they were not able to buy? A. Correct.

Q. And I suppose a great deal of this talk that went into the newspapers about the closing of China was intended to make the people to feel that they were going to get something in the way of Japanese goods?

A. [illegible]

Q. [illegible] A. Yes.

higher prices of goods.

Q. You shut down too, did you? A. Yes.

BY THE COMMISSIONER: Louiseville shut down?

A. Yes.

BY MR. McRUER: Q. When did you shut down?

A. The 14th of December.

Q. You shut down on the 14th of December? A. Yes, I would like to go still further on that. I don't blame it entirely on the Japanese situation. I would not want you to think that. That is not correct. I also blame it on the fact that business was retarded because of the fear that there might be these goods coming in, and that our orders were not coming in as they should and we had a very large stock of goods on hand at that time. I also think up until that point there was no over production of textiles in the country, and the reason I point that thing out is that the production of this country on textiles is such that it means that every yard of goods that comes in from outside sources will shut down a loom in this country. It does not make any difference what class and kind of goods it is at all, whether it is Japanese, Italian, French or American. The situation is such in this country that all the goods that this country can consume can be manufactured by the number of looms in this country.

Q. I suppose there are enough looms in this

[illegible] given at [illegible].

Q. You shut down too, did you? A. Yes.

Q. Yes.

Q. Now, Mr. [illegible], then did you shut down?

A. The 14th of November.

Q. You shut down on the 14th of November? A. Yes, I would like to go until further on that. I don't claim it entirely on the Japanese situation. I would not want you to claim that. That is not correct. I also claim it on the fact that business was regarded because of the fear that there might be these points coming up, and that our orders were not coming in as they should and we had a very large stock of goods on hand at that time. I also think up until that point there was a over production of textiles in the country, and for reason I point that that is one in that the production of this country on textiles is such that it means down every yard of goods that comes in from outside sources will shut down a loom in this country. It has not been by [illegible] that class and kind of goods it is at all, whether it is [illegible], [illegible], [illegible] [illegible]. The situation is such in this country that all we hope is that this country can continue and be manufactured by the number of looms in this country.

"country to manufacture about twice as much goods as could be consumed here? A. Absolutely, yes.

Q. And so your view is that the industry here ought to have 100% of the market in Canada?

A. Yes."

Now, my lord, there is ---

THE COMMISSIONER: I recollect that, that he said he closed the mill on December 14th, but it struck me that the rest of the evidence shows that they had not remained closed very long.

MR. KELLOCK: Unless I have overlooked it, it does not. I have examined it and I could not find it.

MR. McRUER: The next line gives Mr. Marx'point of view:

"Q. That importation of textiles ought to be prohibited? A. Correct."

THE COMMISSIONER: He is not the only one who gave that opinion.

MR. KELLOCK: I cannot substantiate everything. That is on a different matter and I am not discussing that.

THE COMMISSIONER: I would like to know how long that Louiseville mill did remain closed.

MR. KELLOCK: My lord, I will look at that.

-- The Commission adjourned at 5 P.M. to resume Wednesday, February 24th, 1937, at 10.30 A.M.

[illegible]

[illegible] be [illegible] with to such goods as could be consumed [illegible] A. Absolutely, yes.

Q. And so your view is that the industry more ought to have look of the market in Canada?

A. Now?

Now, my lord, there is ---

THE COMMISSIONER: I recollect that, that he said he closed the mill on December 14th, but it appears as that the rest of the evidence shows that they had not [illegible] [illegible]

MR. KELLOCK: Unless I have overlooked it, it does not. I have examined it and I could not find it.

MR. MCGEER: The next line given Mr. Martyn's of views:

"Q. That importation of textiles ought to be prohibited? A. Correct."

[illegible]: [illegible] but opinion.

MR. [illegible]: [illegible] [illegible] that is on a different matter and I am not discussing that.

THE COMMISSIONER: I would like to know how long [illegible] mill was usually closed.

MR. [illegible]: My lord, I give [illegible] [illegible].

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND SEVENTEENTH DAY

(February 24th, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel.
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company,
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J. H. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

L. Beauregard, K.C.	Commission Counsel.
[illegible]	For Chinese Permit Institute.
K.A. Cowan, K.C. John Geoffrion, K.C. and C.F. Gallagher.	For Dominion Textile Company.
[illegible]	For Commission Counsel.
[illegible]	For Montreal Tramways Co. and Dominion Silk Manufacturing Limited.
A.J. Fraser, K.C.	For Canadian Cottons.
[illegible] and J. H. Robert.	For R.J. Shaw Co. Ltd.
Francois Lajoie, K.C.	For Canadian Cotton Co.

Ottawa, Ontario,
February 24th, 1937,

-- The Commission resumed at 10.30 A.M.

--

MR. KELLOCK: Shall I go on, my lord?

THE COMMISSIONER: Yes.

MR. KELLOCK: On page 24 of my friend's Brief there is a slight error which I wish to correct. In the centre of the page, in the paragraph beginning, "Exhibit No. 436 is a statement of the production and stocks reported by members of the Milk Association of Canada from December,1934.....". Now, that Exhibit goes back to June, 1932, my lord.

THE COMMISSIONER: Instead of December 1934?

MR. KELLOCK: Yes, my lord. On page 31 -

THE COMMISSIONER: Of the same Factum?

MR. KELLOCK: Of the same Factum - I should have liked it better if my friend had been here - he makes a charge at the top of the page -

THE COMMISSIONER: Is Mr. McRuer here this morning?

MR.BEAUREGARD: I did not see him, my lord.

THE COMMISSIONER: Go on. We will give him an opportunity later to deal with what you have said. What is it?

MR. KELLOCK: My learned friend says:

"The representatives of the Industry, having failed to get their demands,met immediately at Ottawa "-

Allan, Melville,
Secretary with, Inc.,

— The Committee resumed at 10.30 a.m.

—

Mr. KEEGAN: Shall I go on, my Lord?

The COMMISSIONER: Yes.

Mr. Keegan: On page 44 of my friend's brief there is a slight error which I wish to correct. In the centre of the page, in the paragraph beginning "Exhibit 34. And is a statement of the production and sales reported by members of the Milk Association of Canada from December, 1934.....". Now, that should read over to June, 1937, my Lord.

Mr. Allan: Yes, my Lord. On page 21 -

The COMMISSIONER: Of the same Statement

Mr. KEEGAN: Of the same Statement - I should have liked it better if my friend had been here - he makes a change at the top of the page -

The COMMISSIONER: Is Mr. Weaver here this morning?

Mr. ROBERTSON: I did not see him, my Lord.

The COMMISSIONER: Go on. We will give him an opportunity later to deal with that you have said. What is it?

Mr. Allan: By Lawson Tissot Boyer

"The representatives of the Interest, having failed to get their demands met immediately on return -"

He is referring to the meeting at Ottawa on January 14th last.

"declining to follow the suggestion of the Ministers to bring further proof of the necessity of governmental action, evidently decided that the government might be intimidated by force of this character. This Mill - "

That is the Sherbrooke mill.

"--was therefore used for the purpose as it would be profitable to the company under the circumstances and, it was hoped, effective to accomplish the results."

Now, my lord, if the opening phrase, "the representatives of the industry" - and it is plural - means the one Company, I have nothing to say about it. My friend Mr. Heward can deal with it.

THE COMMISSIONER: It depends on the context. What goes before? Apparently he was talking up to then of the Dominion Textile Company.

MR. KELLOCK: Yes, but for some pages, my lord, he was talking --

THE COMMISSIONER: He says that it was convenient for the company, "owing to the condition of the stocks at Sherbrooke and the shortage of machinery at the Print Works, to close this particular mill at that time, in fact it has been convenient to curtail production for some days prior to the closing."

MR. KELLOCK: Here is my friend. I was speaking

ROBT. BRYDIE
TORONTO - CANADA

by interfering in the dealing of private or property interests.

"Desiring to follow the suggestion of the Ministers to bring further proof of the necessity of governmental action, evidently doubts that the government might be intimidated by forces of this character. This Bill - "

That is the Harbrooke Mill.

"--was therefore used for the purpose as it would be profitable to the company and of the country and, it was hoped, effective to accomplish the results."

Now, my lord, if the closing phrase, "the requirements of the industry" - and it is, lord - means the one company, I have nothing to say about it. My friend Mr. Howard can deal with it.

MR. GORDON: It depends on the context. In what does further? Apparently he was talking up to that of the Dominion Textile company.

MR. BRYDIE: Yes, but for some purpose, my lord, he was talking --

THE COMMISSIONER: He says that it was convenient for the company, owing to the cancellation of the stocks at Harbrooke and the shortage of machinery at the Valley Cross, to close this particular mill at that time. In fact it has been convenient to control production for some time - for the time being.

MR. BRYDIE: Here is an item. I am reading

of page 31, Mr. McRuer, and directing my attention to the opening phrase of that paragraph. Does that mean the Dominion Textile Company only or does it mean the entire textile industry?

Mr. McRUER: I think there is evidence that they were pretty much working together on it.

Mr. KELLOCK: Well then, my lord, my friend does mean the industry.

Mr. McRUER: It was the Dominion that acted. I was referring undoubtedly to the closing of the mill by the Dominion.

MR. KELLOCK: Well, of what are you speaking in the opening phrase:

"The representatives of the industry, having failed to get their demands, met immediately at Ottawa, declining to follow the suggestion of the ministers to bring further proof of the necessity of governmental action, evidently decided . . ."

Does that mean the entire industry?

Mr. McRUER: Those that were here.

MR. KELLOCK: Those who were at the meeting?

MR. McRUER: Yes.

MR. KELLOCK: All right. Now, my lord, my submission is that there is no evidence whatever to support that charge. Mr. Gordon himself, the head of the Dominion Textile Company, said that that matter, the closing of the mill, was entirely his own affair. My friend had Mr. Marx, who was at the meeting at Ottawa, Mr. Tolmie, Mr. Lundy, Mr.

of page 31, Mr. McGuire, and directing my attention to the opening phrase of that paragraph. Does that mean the Dominion Textile Company only or does it mean the entire textile industry?

Mr. McGUIRE: I think there is evidence that they were pretty much working together on it.

Mr. KNOWLCOM: Well then, my lord, my friend does mean the industry.

Mr. McGUIRE: It was the Dominion that acted. was referring undoubtedly to the closing of the mill by the Dominion.

MR. KNOWLCOM: Well, of what are you speaking in the opening phrase:

"The representatives of the industry, having failed to get their demands, met immediately at Ottawa, declining to follow the suggestion of the ministers to bring further proof of the necessity of governmental action, evidently satisfied . . . "

Does that mean the entire industry?

Mr. McGUIRE: Some like/ were sorry.

MR. KNOWLCOM: Those who were at the meeting?

Mr. McGUIRE: Yes.

Mr. KNOWLCOM: All right. Now, my lord, my submission is that there is no evidence whatever to support that charge. Mr. Gordon himself, the head of the Dominion Textile Company, said that that matter, the closing of the mill, was entirely his own effort. My friend Mr. McGuire, has made a

Watson, Mr. Taylor, Mr. MacDougall, and Mr. Dodd, and from what I can find in the evidence my friend never suggested to any of these gentlemen when they were in the box any such charge as is made in that brief. My submission is that there is no evidence whatsoever -- my friend can have any suspicion that he likes, but my submission is that this or any other tribunal is not going to act on their suspicion, and my friend never suggested to any of these gentlemen that he was making the charge or would make the charge, and I submit that there is not a tittle of evidence to support it. The affirmative evidence is that it was entirely Mr. Gordon's own action. That being so, I ask your lordship to find as a fact that there is no evidence and that that is an absolutely unfounded charge. I submit, my lord, that these gentlemen ought to be cleared of that charge. There either is evidence or there is not. I submit there is not anything but my friend's own suspicions.

MR. McRUER: There is the Marx report that was sent out and asked them to curtail production and that sort of thing, -- immediately after.

MR. KELLOCK: Well, just let us look at the Marx report, which is Exhibit 277. Might I have it, please?

MR. McRUER: They were struggling around to find evidence, even telephoning to England to get support, and then they close the mill that does not manufacture the goods.

MR. KELLOCK: What my friend is referring to is

Prince, Mr. Taylor, Mr. McCormick, and Mr. Gordon, and from what I can find in the evidence my friend never suggested to any of these gentlemen when they were in the box any such charge as is made in that brief. My submission is that there is no evidence whatsoever -- my friend can have any suspicion that he likes, but my submission is that this or any other tribunal is not going to act on their suspicion, and my friend never suggested to any of these gentlemen that he was making the charge or would make the charge, and I submit that there is not a little of evidence to support it. The affirmative evidence is that it was entirely Mr. Gordon's own action. That being so, I ask your Lordship to find as a fact that there is no evidence and that that is an absolutely unfounded charge. I think, my Lord, that these gentlemen ought to be cleared of that charge. There either is evidence or there is not. I submit there is not anything but my friend's own suspicions.

LA. MOFFAT: There is the Hare report that was sent out and asked them to overall production and that sort of thing. -- immediately after.

MR. LAMOUR: Well, just let me look at the Hare report, which is entirely gvt. Where I saw it, please?

MR. MOFFAT: They were strongly urged to do this, which, that indicated to Hare in my report, and then they also the mill that was actually-- factors the goods.

the closing of the Sherbrooke mill. The closing of the Louiseville mill had nothing whatever to do with the matter. I should report to your lordship this morning that I had Mr. Pinatel's evidence read, and there is nothing in it about closing the mill for two days. The only place where two days is mentioned, which perhaps may be in your lordship's mind, is in connection with the strike in 1934 when the mill was closed for two days. There is no mention in Mr. Pinatel's evidence at all. So, my lord, the closing of the Louiseville mill had nothing whatever to do with the interview or any decision which was made on the 14th January, because the mill had then been closed for a month.

THE COMMISSIONER: Can this much be established, then: Why was the Louiseville mill opened again so soon after this meeting as the 18th of January? Does that appear anywhere?

MR. McRUER: It was opened before the meeting of the 18th?

THE COMMISSIONER: No, the meeting here was on the 14th:as I understood it yesterday the Louiseville mill was closed from the 14th December to about the 18th of January. How did it come to reopen on the 18th January?

MR. KELLOCK: As far as the evidence is concerned of course it does not touch it.

THE COMMISSIONER: Apparently it happened about the time the Sherbrooke mill was closed.

MR. KELLOCK: It was closed on the 17th.

the closing of the Lourdesville Mill. The closing of the Louisville mill had nothing whatever to do with the matter. I should report to your lordship this morning that I had Mr. Finetel's evidence read, and there is nothing in it about closing the mill for two days. The only place where two days is mentioned, which perhaps may be in your lordship's mind, is in connection with the strike in 1894 when the mill was closed for two days. There is no mention in Mr. Finetel's evidence at all. So, my lord, the closing of the Louisville mill had nothing whatever to do with the interview or any decision which was made on the 14th January, because the mill had then been closed for a month.

THE COMMISSIONER: Can this much be established, then: Why was the Louisville mill opened again so soon after this meeting on the 10th of January? Does that appear anywhere?

MR. McRUER: It was opened before the meeting of the 18th.

THE COMMISSIONER: No, the meeting here was on the 14th: as I understood it yesterday the Louisville mill was closed from the 14th December to about the 10th January. Was it open in groups in the 10th January?

MR. McRUER: As far as the evidence is concerned it seems it was not open.

THE COMMISSIONER: Apparently it remained closed; the Louisville mill was closed.

MR. McRUER: It opened the next day. Taking turns.

MR. KELLOCK: As far as the evidence is concerned there is nothing said, and I read it all, as to why the Louiseville mill was reopened, and I did not cover that in getting my instructions from Mr. Marx, so I cannot say why, whether the situation had improved or what it was, but there is no evidence, my lord, that connects it in any way with anything that took place on the 14th of January, and the closing of it certainly had nothing to do with it.

MR. McRUER: Nothing to do with Japanese competition.

MR. KELLOCK: Now, please do not interrupt quite so much. I say that the closing of the Louiseville mill on the 14th December could not possibly have had anything to do with any dissatisfaction with any interview on the 14th of January. So that what my friend is talking about is the closing of the Sherbrooke mill.

THE COMMISSIONER: One would rather think, if there was no evidence, that Mr. Marx was rather satisfied with the interview of the 14th January, because he goes back and reopens his mill and Mr. Gordon goes back and closes his.

MR. KELLOCK: All right. What I am dealing with is that it was not a concerted action.

THE COMMISSIONER: That it was Mr. Gordon's own action?

MR. MORGAN: It [illegible] one day. Leading

[illegible]

MR. KELLOGG: As far as the evidence is concerned there is nothing said, and I read it all, as to why the Louisville mill was reopened, and I did not cover that in getting my instructions from Mr. Marx, so I cannot say why, whether the situation had improved or what it was, but there is no evidence, my lord, that connects it in any way with anything that took place on the 14th of January, and the closing of it certainly had nothing to do with it.

MR. MORGAN: Nothing to do with Japanese competition.

MR. KELLOGG: Now, please do not interrupt quite so much. I say that the closing of the Louisville mills on the 14th December could not possibly have had anything to do with any dissatisfaction with any interview on the 14th of January. So that what my friend is talking about is the closing of the Sherbrooke mill.

THE COMMISSIONER: One would rather think, if there was no evidence, that Mr. Marx was rather satisfied with the interview of the 14th January, because he goes back and reopens his mill and Mr. [illegible] [illegible] [illegible].

MR. [illegible]: [illegible] I am [illegible] [illegible] is that in [illegible] [illegible].

THE COMMISSIONER: [illegible] [illegible]

MR. KELLOCK: Yes. Mr. Gordon says so himself, and there is no other evidence. I submit it is an absolutely unfounded charge that my friend makes, that there is no evidence to support it, and I ask your lordship to so find, because it is a serious charge and these gentlemen have been unjustly accused by my friend and ought to be cleared.

MR. McRUER: They were asked to bring further proof, and they never went back to the government at all.

MR. KELLOCK: On pages 36 and 37 my friend, dealing with another subject says, at about the middle of the page:

> "That there was no substantial competition being received from Japanese goods was made clear in evidence by the buyers called from the large Canadian departmental stores and wholesale houses."

And he sets forth a list, and over the page my friend says:

> "All gave evidence before the Commission that the purchases of Japanese rayon fabrics were inconsequential and confined mostly to a brocaded rayon taffeta, which, according to these witnesses, was not made in Canada."

Now there are several statements there. He says that all gave evidence to that effect, that, first, the purchases were inconsequential, secondly, they were mostly confined to a brocaded rayon taffeta, and thirdly, that according to those who gave evidence,

MR. MACLOOK: Yes. Mr. Gordon says no himself, and there is no other evidence. I submit it is an absolutely unfounded charge that my friend makes, that there is no evidence to support it, and I ask your lordship to so find, because it is a serious charge and these questions have been unjustly assumed by my friend and ought to be cleared.

MR. [illegible]: They have admitted in their [illegible] proof, and they never went back to the government at all.

MR. MACLOOK: On pages 26 and 27 my friend, dealing with another subject says, at about the middle of the page:

"That there was no substantial consideration being received from Japanese goods has made clear in evidence by the buyers called from the Lower Provinces Associations stores and shipping houses."

And he sets forth a list, and over the page my friend says:

"All save evidence before the Commission that the purchases of Japanese rayon fabrics were inconsequential and confined mostly to a brocaded rayon taffeta, which, according to these witnesses, was not made in Canada."

Now there are several statements there. He says that all save evidence to that effect, then, first, the purchases were inconsequential, secondly, they were mostly confined to a brocaded rayon taffeta, and

it was not made in Canada. Taking the first witness, Mr. Switzer, whose evidence is to be found on pages 6689, lines 11 to 17, and 6690, lines 14 to 18 --

MR. McRUER: I refer there to a different page.

MR. KELLOCK: Page 6696, lines 20 to 24. His evidence is this, and I have taken it verbatim:

"In connection with the goods dealt in this year aside from what the witnesses told my friend, are they of a class or kind made in Canada?"

A. The lines we are buying now?

Q. Yes.

A. They are."

That is, they are of a class made in Canada.

Mr. McRUER: Well now, that is --

MR. KELLOCK: Please do not interrupt.

MR. McRUER: It is most unfair to take replies or reference to evidence of some other place that is referring to something else and try to weave it into a paragraph dealing with another matter. What I am saying here is that their evidence is that that brocaded rayon taffeta was not made in Canada, and that is what they said, they never heard of it being bought in Canada, and I say this evidence shows the other purchases were inconsequential. You are taking two things and trying to pull something out of one and apply it to the other.

THE COMMISSIONER: Let us see about the brocaded rayon taffeta. Is that what Mr. Switzer is talking about?

MR. McRUER: Yes, they were confronted right with

it was not said in Canada. Taking the final sentence, Mr. Chairman, whose evidence is it is from? Is it your evidence, Mr. Mosher? Please read it.

MR. MOSHER: I refer there to a different page.

MR. KELLOCK: Page 6596, lines 20 to 26. The evidence is this, and I have taken it verbatim:

"In connection with the goods dealt in this year aside from what the witnesses told my friend, are they of a class or kind made in Canada?

A. The lines we are buying now?

Q. Yes.

A. They are."

That is, they are of a class made in Canada.

Mr. Mosher: Well now, that is --

MR. KELLOCK: Please do not interrupt.

MR. Mosher: It is most unfair to take replies or reference to evidence of some other place that is referring to something else and try to weave it into a paragraph dealing with another matter. What I am saying here is that their evidence is that that broaded rayon taffeta was not made in Canada, and that is what they said, they never heard of it being bought in Canada, and I say this evidence about the other purchases were inconsequential. You are taking two things and trying to pull something out of one and apply it to the other.

THE COMMISSIONER: Let us see about the broaded rayon taffeta. Is that what Mr. Switzer is talking about?

Mr. Mosher: Yes, they were confirmed it

it.

Mr. KELLOCK: What my friend is accusing me of doing is just what my friend does in his brief. He refers to his own examination of his witnesses at the pages he has given, and he ignores the cross-examination, which I have given to your lordship.

THE COMMISSIONER: I think you had better follow your own trend of thought here. You said there were three mis-statements in that paragraph. The first is that all gave evidence.

MR. KELLOCK: Yes.

THE COMMISSIONER: I presume you mean, some did not give evidence?

MR. KELLOCK: Yes.

THE COMMISSIONER: Well then, deal with that first. Who did not give evidence?

MR. KELLOCK: I have dealt in my notes with the witnesses individually. Some of them cover one statement and some another.

THE COMMISSIONER: Mr. McMuer simply says that all these people gave evidence. You say that some of them did not give evidence.

MR. KELLOCK: Oh, they all gave evidence, but not to the effect my friend says.

THE COMMISSIONER: Well then, that first thing goes. Take, then, this brocaded rayon taffeta. He says the evidence they gave is that their sales were confined mostly to taffeta and that that is an article not made in Canada. He says it is the rayon fabric purchases that are inconsequential.

it.

MR. RULOCK: What my friend is searching so of doing is just what my friend does in his brief. He selects in his own examination of his witnesses at the pages he has given, and he ignores the cross-examination, which I have given to your lordship.

THE COMMISSIONER: I think you had better follow your own trend of thought here. You will have here two non-[illegible] in the [illegible] The first is that all gave evidence.

MR. RULOCK: Yes.

THE COMMISSIONER: I presume you mean, some did not give evidence?

MR. [illegible]: Yes.

THE COMMISSIONER: Well then, deal with that [illegible]

MR. [illegible]: I have dealt in my notes with the witnesses individually. Some of them cover one statement and some another.

THE COMMISSIONER: Mr. Meager simply says that all these people gave evidence. You say that some of them did not give evidence.

MR. [illegible]: Oh, they all gave evidence, but not to the effect my friend says.

THE COMMISSIONER: Well then, that first thing goes. Take, then, this proceeded upon tactics. He says the evidence they gave is that their orders were [illegible] to tactics and that that is an [illegible] in Canada. He says it is the [illegible] that are incompatible.

MR. KELLOCK: I am ~~not~~ dealing with what Mr. Switzer said about brocaded taffeta, on the point as to whether or not it was of a class or kind made in Canada.

THE COMMISSIONER: The brocaded taffeta?

MR. KELLOCK: Yes. Now here is his evidence. I read the first part and then my friend interrupted me. On page 6690, lines 14 to 18:

"Q. What about the artificial product?

"A. I understand there is a line made in Canada. I have not seen it yet.

"Q. Do you regard that as a type of goods made in Canada?

"A. Yes."

You cannot say that Mr. Switzer said that brocaded rayon taffeta was of a class or kind not made in Canada.

MR. McRUER: What they did say was --

MR. KELLOCK: I will deal with what they said individually, if my friend will permit.

MR. McRUER: What they said was that these goods were not ever thought to have ever been sold as goods made in Canada. The majority of them at any rate said that they had never heard of them being made in Canada.

MR. KELLOCK: My friend now says "the majority". His brief said "all," and that is what I am dealing with.

MR. McRUER: I want to say that, without just taking a meticulous analysis of each sentence, I did the

MR. KELLOCK: I am ~~we~~ dealing with what Mr. Switzer said about brocaded taffeta, on the point as to whether or not it was of a class or kind made in Canada.

THE COMMISSIONER: The brocaded taffeta?

MR. KELLOCK: Yes. Now here is his evidence. I read the first part and then my friend interrupted me. On page 6590, lines 14 to 18:

"Q. What about the artificial product?

"A. I understand there is a line made in Canada. I have not seen it yet.

"Q. Do you regard that as a type of goods made in Canada?

"A. Yes."

You cannot say that Mr. Switzer said that brocaded rayon taffeta was of a class or kind not made in Canada.

MR. McGUIGAN: What they did say was --

MR. KELLOCK: I will deal with what they said individually, if my friend will permit.

MR. McGUIGAN: What they said was that these goods were not ever thought to have ever been sold on goods made in Canada. The majority of them at any rate said that they had never heard of them being made in Canada.

MR. KELLOCK: My friend uses the "majority" -- is that his word, and that is what I am dealing with.

MR. McGUIGAN: I was in my mind, from being

RAYMOND

very best I could under very, very heavy pressure to try to be as scrupulously accurate as I could in everything, and I do say, and I stand by it, that the evidence of these witnesses was, generally speaking, all the way through that they had not bought any Canadian brocaded taffeta, did not handle it, and the most of them at any rate said they had never heard of it being made in Canada. Switzer's evidence certainly was that they had never handled it.

MR. KELLOCK: Well, if my friend will just not repeat what is in his brief, and give me the opportunity to answer what is in his brief, I should like to do it.

THE COMMISSIONER: All right. Go on.

MR. KELLOCK: Mr. Fletcher deals with brocaded taffeta, on page 6614, lines 1 to 10.

THE COMMISSIONER: What does he say?

MR. KELLOCK: He says that the plain is made in Canada, that the brocaded may be but he did not know. Your lordship will recall that he had been in the country only about six months. His evidence is also on pages 6717 and 6719 -- in fact from 6722 right through to 6725. Mr. Surphlis dealt with 36-inch rayon and 27-inch brocaded taffeta, and his evidence is on pages 6844 and 6862. What he said was that when he said to my friend that brocaded rayon was of a class or kind not made in Canada he meant he had not seen it in the 27-inch but he had seen it in the 36-inch. Now, Mr. Matinson --

THE COMMISSIONER: What does that mean?

very hard, I shall never think, you have proved it to
try to be as scrupulously accurate as I could in
stating, and I do say, and I stand by it, that
the evidence of these witnesses was, generally speak-
ing, all the way through that they had not heard
any Canadian crossed tarlets, did not handle it, and
the most of them at any rate said they had never
heard of it being made in Canada. Switzer's evi-
dence certainly was that they had never handled it.

MR. LAMOUR: Well, if my friend will just put
forward what is in his brief, and give me the oppor-
tunity to answer what is in his brief, I should like
to do it.

THE COMMISSIONER: All right. Go on.

MR. LAMOUR: Mr. Fletcher deals with crossed
tarlets, on page 6444, lines 1 to 10.

THE COMMISSIONER: What does he say?

MR. LAMOUR: He says that the claim is made in
Canada, and the Commission may be not of different
view Lordship will recall that he had been in the
country only about six months. His evidence is also
to the effect that -- he says from 1947 right
through to 1950. Mr. Burchille dealt with 36-inch
rayon and 27-inch crossed tarlets, and his evidence
is as follows 4947 and 1948. Then he said was that
there is no doubt that crossed tarlets increased during the
last three or four years, so that there is not much in
that. He is the 36-inch, Mr. Burchille --

THE COMMISSIONER: Mr. Burchille --

MR. KELLOCK: It just means, my lord, that when he said that the brocaded rayon was not made in Canada he said that because in respect of the 27-inch he had not seen the product that was made in Canada but he had seen 36-inch that was made in Canada.

THE COMMISSIONER: Well then, how can he say that the material was not made in Canada?

MR. KELLOCK: I don't know. He cannot say it. But he had said in chief that it was not of a class or kind made in Canada.

MR. McRUER: I think we showed him the article in the witness box and asked him if he had ever seen it offered for sale.

MR. KELLOCK: No, he said in chief, in answer to my friend, it was of a class or kind not made in Canada. In cross-examination he said he had not seen the 27-inch but he had seen the 36-inch, and how he could say it was a class or kind not made in Canada I do not know.

MR. McRUER: It was 27-inch we were dealing with. That is what was being imported.

MR. KELLOCK: Even if it was 27-inch, that we were dealing with, how could a man say it was a class or kind not made in Canada if he had not seen it?

Now take Mr. Mattinson, the buyer for Greenshields Company. His evidence is at 6992 and 6993, and there are a great many references from 6995 right through to 7008. He gave evidence that he had bought plain and had bought jacquards and

MR. ARMOUR: It just means, my lord, that when he said that the proceeded report was not made in Canada he said that because in respect of the 27-inch he had not seen the product that was made in Canada but he had seen 36-inch that was made in Canada.

THE COMMISSIONER: Well then, how can he say that the material was not made in Canada?

MR. ARMOUR: I don't know. He cannot say it. But he had said in chief that it was not of a class or kind made in Canada.

MR. NEWMAN: I think we showed him the article in the witness box and asked him if he had ever seen it offered for sale.

MR. ARMOUR: No, he said in chief, in answer to my friend, it was of a class or kind not made in Canada. In cross-examination he said he had not seen the 27-inch but he had seen the 36-inch, and how he could say it was a class or kind not made in Canada I do not know.

MR. McMURTRY: It was 27-inch we were dealing with. That is what was being imported.

MR. ARMOUR: Even if it was 27-inch, that we were dealing with, how could a man say it was a class or kind not made in Canada if he had not seen it?

THE COURT: Mr. Mattinson, the buyer for Greenhalgh Company.

MR. ARMOUR: He was asked if he had seen the 36-inch, and I cannot say relevant from this point of view. He gave evidence that he had seen the 36-inch. He gave evidence that he [illegible]

had given repeat orders for the plain. The jacquard is brocaded.

THE COMMISSIONER: You are talking about Canadian material he had bought?

MR. KELLOCK: No, Japanese, and he also said thatthat was of a class or kind made in Canada. Mr. Doner, his evidence is at 7010 to 7015. He said he had been in Canada only since the 15th October, 1935, he had not bought at all any kind of these rayons and he said he had not seen any Canadian jacquards since coming to Canada. That is the substance of his evidence. The result of that, my lord, is that they had bought not only the brocaded, they had bought the plain, and in the case of Greenshields and Company they had given repeat orders for the plain, and they did not all say by any means that this material was of a class or kind not made in Canada. Some of them said it was, and those who said it was of a class or kind not made in Canada did so because they had not seen it themselves or, as I recall, in some cases they acceded to my friend's suggestion that because the Canadian article was a little better in quality that this was of a class or kind not made in Canada.

MR. McRUER: I give all the evidence about what was made in Canada in the next paragraph of my brief. I was not attempting to say it was not made in Canada. You are suggesting that I put in the brief something that suggested that this was not made in Canada. What I was attempting to convey was that these large

had given repeat orders for the plain. The
inquiry is proceeded.

THE COMMISSIONER: You are talking about Canadian
material he had bought?

MR. MORROW: No, Japanese, and he also said
that that was of a class or kind made in Canada. Mr.
Doner, his evidence is at VOLO to VOL5. He said
he had been in Canada only since the 13th October,
1925, he had not bought at all any kind of these
rayons and he said he had not seen any Canadian
inquiries since coming to Canada. That is the
substance of his evidence. The result of that, my
lord, is that they had bought not only the proceeded,
they had bought the plain, and in the case of Cross-
shields and Company they had given repeat orders for
the plain, and they did not all say by any means that
this material was of a class or kind not made in
Canada. Some of them said it was, and those who
said it was of a class or kind not made in Canada
did so because they had not seen it themselves or,
as I recall, in some cases they acceded to my
friend's suggestion that because the Canadian arti-
cle was a little better in quality that this was of
a class or kind not made in Canada.

MR. MORROW: I give all the evidence about what
was made in Canada in the next paragraph of my brief.
I was not attempting to say it was not made in Canada.
You are suggesting that I put in the brief something
that suggested that this was not made in Canada.
That I was attempting to convey the impression that

buyers had not been handling it. I go on in the very next paragraph to point out that Mr. Gordon had put in invoices --

MR. KELLOCK: Well, my lord --

MR. McRUER: What is the use of trying --

MR. KELLOCK: As I read my friend's brief his contention is the same.

MR. McRUER: I think, taking these two paragraphs together, what stands out is Mr. Gordon's evidence that a similar taffeta is made by the Montreal Cottons Limited. The argument is that it cannot be made very extensively since these buyers, even on what you say, do not know much about it.

MR. KELLOCK: Some of them had seen it, and the evidence was that it was made. My point is that it is ~~XXXXXXXXXX~~ not a correct interpretation of the evidence of these buyers to say what my friend says on page 37, because they did not say that. And as a matter of fact my friend contended all the way through that merely because of the difference in workmanship the Japanese taffetas, both plain and brocaded, were not of a class or kind made in Canada, but my friend is the only one who gives evidence to that effect. Mr. Hooper, at page 12224, said that the department had made no such ruling.

THE COMMISSIONER: No ruling that this was not made in Canada.

MR. KELLOCK: Yes.

MR. McRUER: But the department ruled that habutai silk, although not made in Canada, because silk

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lawyers had not been involved ?). I am in the very just preference to point out that Mr. Gordon has not in Brydie —

MR. [illegible]: Well, my lord —

MR. MORAN: What is the use of trying —

MR. [illegible]: As I read my friend's brief his contention in the case,

MR. MORAN: I think, taking these two paragraphs together, what stands out is Mr. Gordon's evidence that a similar tariffs is made by the Montreal Cottons Limited. The argument is that it cannot be made very extensively since these buyers, even as what you say, do not know much about it.

MR. [illegible]: Some of them had seen it, and the evidence was that it was made. My point is that it is [illegible] not a correct interpretation of the evidence of these buyers to say what my friend says on page 27, because they did not say that. And as a matter of fact my friend [illegible] all the way through that merely because of the difference in [illegible] the Japanese tariffs, both plain and [illegible], were not of a size or kind made in Canada, and so failed in the main one also given evidence to that effect. Mr. Dagger, at page [illegible], said that the department had made no such ruling.

MR. [illegible]: I believe that [illegible] made in Canada.

MR. [illegible]: Yes.

MR. MORAN: But the department stated that [illegible] although not made in Canada, [illegible]

is made in Canada, it is of a class or kind made in Canada, -- any taffeta.

THE COMMISSIONER: What is your reference to Mr. Hooper's evidence?

MR. KELLOCK: Page 12224, lines 17 to 19. I want also to point this out; I shall have occasion to refer to it specially later. When my friend gets to deal with Exhibit 866, which deals with the import, whether it is an actual import or not, from -- I think it was -- the United States of a fabric that was composed partly of rayon and had a cotton warp, my friend says, using his language, that this is a corresponding fabric to the Montreal Cottons' ~~main~~ toy.

THE COMMISSIONER: Are you talking of the same page?

MR. KELLOCK: No, it is a different page. I will have to come to it later. I have not it in my notes but I have it some place else. My friend said in another place in his brief that a fabric which has a cotton warp is the corresponding fabric to the Canadian rayon which is made all of rayon.

MR. McRUER: I do not say anything of the kind in my brief.

MR. KELLOCK: My friend is just full of contradictions. I will come to it.

THE COMMISSIONER: Well, unless you can show me the page in the brief I cannot know what he says.

Mr. McRUER: I pointed out it had a cotton warp and that Mr. Hooper made an adjustment of the differ-

is made in Canada, it is of a class or kind made in Canada, -- my belief.

THE COMMISSIONER: What is your reference to Mr. Hooper's evidence?

MR. ARMOUR: Page 12296, lines 17 to 19. I went also to point this out; I shall have occasion to refer to it specially later. When my friend gets to deal with Exhibit 886, which deals with the import, whether it is an actual import or not, from -- I think it was -- the United States of a fabric that was composed partly of rayon and had a cotton warp, my friend says, using his language, that this is a corresponding fabric to the Montreal bottoms' warp.

THE COMMISSIONER: Are you talking of the same warp?

MR. ARMOUR: No, it is a different warp. I will have to come to it later. I have not it in my notes but I have it some place else. My friend calls in another place in his brief that a fabric which has a cotton warp is the corresponding fabric to the Canadian rayon which is made all of rayon.

MR. MONTGOMERY: I do not say anything of the kind in my brief.

MR. ARMOUR: My friend is just full of a surprise! I will come to it.

MR. MONTGOMERY: Well, where you can show me the page in the brief I will have look at it.

MR. ARMOUR: I believe that is not a fair -- I

ence in the cost of the cotton warp, pointed out that the cotton warp would be cheaper and reduced it, and that was the one that sold, the corresponding one of that class of goods.

MR. KELLOCK: That is exactly it. It was a fabric imported from the States which had a cotton warp, and when it is pointed out that it has a cotton warp my friend says, "Oh well, just add so much more a pound, and you have the same thing as if it were made all of rayon." But my point is that in another place in his brief, for another purpose, my friend compares a fabric which is partly of cotton and partly of rayon to these Canadian domestic rayons and says it is the corresponding thing. But here, when he is maintaining, as he does all through the evidence -- I am sorry I have to disagree with my friend -- he says simply because the Japanese article is of inferior workmanship to the Canadian domestic rayon it is of a class or kind not made in Canada, and as I say, there is nothing to support that except my friend's statement and his contention all the way through.

MR. McRUER: I do not say it is a class or kind not made in Canada. My brief is perfectly clear on it. I do not know why you are mis-stating it.

MR. KELLOCK: If it were worth while I could turn up plenty of places in the evidence where my friend did say so.

THE COMMISSIONER: Are you still talking of the printed rayon?

same in the coat of the cotton warp, pointed out that the cotton warp would be cheaper and reduced it, and that was the one that sold, the corresponding one of that class of goods.

MR. ZIMMOCK: That is exactly it. It was a fabric imported from the states which had a cotton warp, and when it is pointed out that it has a cotton warp, "Oh well, just add so much more per yard duty". "Oh well, just add so much more a pound, and you have the same thing as if it were made all of rayon." But my point is that in another place in his brief, for another purpose, my friend compares a fabric which is partly of cotton and partly of rayon to those Canadian domestic tweeds and says it is the corresponding thing. But here, when he is maintaining, as he does all through the evidence -- I am sorry I have to disagree with my friend -- he says simply because the Japanese article is of inferior workmanship to the Canadian tweeds, rayon it is of a class or kind not made in Canada, and as I say, there is nothing to support that except Mr. Graham's statement and his contention all the way through.

R. McKEON: I do not say it is a class or kind not made in Canada. My belief is positively clear on it. I do not know why you are mis-stating it.

MR. ZIMMOCK: If it were worth while I could be of great assistance in the evidence were my friend not my.

[illegible]: Has you still failing of the [illegible]

MR. KELLOCK: I am still speaking of the printed rayon.

THE COMMISSIONER: I think he said Mr. Gordon gave evidence that a similar taffeta was made by the Montreal Cottons Limited; that is, made in Canada, but that it cannot be contended it was sold in a substantial commercial way in Canada, -- which is a different thing. He has admitted it is made in Canada. All he is arguing is that it is not sold here in a substantial commercial way.

MR. KELLOCK: I cannot recall the exhibit number, but there is evidence of shipment by the Montreal Cottons of these fabrics covering sales from coast to coast. That evidence is before the Commission and shows the extent to which the fabric had been sold in Canada.

MR. McRUER: Over a period of years there are invoices of a number of wholesalers in different parts of the country, but my recollection is that there is not a single invoice on the whole pile from one of the large departmental stores, either at Toronto or Montreal. There may have been, but they are very few.

MR. KELLOCK: Mr. Gordon tells me that the exhibit includes several sales to both the large departmental stores.

MR. McRUER: We will see how consequential they are.

MR. KELLOCK: However, if my friend abandons the contention, if he made it, as I understand he

THE COMMISSIONER: I think he said Mr. Gordon gave evidence that a similar fabric was made by the Montreal Cotton Limited; that is, made in Canada, but that it cannot be contended it was sold in a substantial commercial way in Canada, -- which is a different thing. He has admitted it is made in Canada. All he is arguing is that it is not sold here in a substantial commercial way.

MR. KAMLOOK: I cannot recall the exhibit number, but there is evidence of shipment by the Montreal Cotton of these shirts covering sales from coast to coast. That evidence is before the Commission and shows the extent to which the fabric had been sold in Canada.

MR. MOFFAT: Over a period of years there are invoices of a number of wholesalers in different parts of the country, but my recollection is that there is not a single invoice on the whole pile from one of the large department stores, either at Toronto or Montreal. There may have been, but

MR. KAMLOOK: Mr. Gordon tells us that the exhibit includes several sales to both the large department stores.

MR. MOFFAT: We will see the consequential sales.

MR. KAMLOOK: Anyway, it is time consuming to argue it. We have it.

made it, -- if he does not make it now, that these goods are of a class or kind not made in Canada, I am quite satisfied.

MR. McRUER: I never made such a contention. I made it as clear as I could. I am not abandoning anything or retracting anything, only I do resent your way of trying to read something into the brief that is not there.

MR. KELLOCK: Well, if it were worth while I think I could turn up plenty of places in the evidence to show that my friend did say that. If he says that is not the contention he is now making I am quite satisfied with it.

MR. McRUER: My contention is in my brief.

MR. KELLOCK: I think that is all I want to say on that section of my friend's brief.

I wish now to say something with regard to some of the theories which my friend expresses in his brief, and subsequently come to the financial history of the companies which have reported and of the industry as a whole. I want to call your lordship's attention to the foreword in my friend's brief. I do not know whether your lordship has read it or not. I draw attention to it not from any critical attitude, but I submit that it shows the point of view of my friend in presenting his argument.

THE COMMISSIONER: Well, he says he presents his argument from the point of view of the consumers, the employees and the public. You and the gentle-

made it, -- if he does not make it now, that these goods are of a class or kind not made in Canada, I am quite satisfied.

MR. MORRIS: I never made such a contention. I made it as clear as I could. I am not abandoning anything or retracting anything, only I do resent your way of trying to read something into the brief that is not there.

MR. HALLOCK: Well, if it were worth while I think I could turn up plenty of places in the evidence to show that my friend did say that. If he says that is not the contention he is now making I am quite satisfied with it.

MR. MORRIS: My contention is in my brief.

MR. HALLOCK: I think that is all I want to say on that section of my friend's brief.

I wish now to say something with regard to some of the theories which my friend expresses in his brief, and subsequently come to the financial history of the companies which have factored and of the industry as a whole. I want to call your lordship's attention to the foreword in my friend's brief. I do not know whether your lordship has read it or not. I draw attention to it not from any critical attitude, but I submit that it shows the point of view of my friend in presenting his argument.

MR. HELLMUTH: Well, he says he presents his argument from the point of view of the consumers and the public. You can [illegible]

men around you are presenting the point of view of the industry. That is a fair division of labour.

MR. KELLOCK: That is all I wanted to draw attention to. But I want also to point out that my friend sets out on page 2 of his brief what the order in council says. In fact I want to read from the order in council itself.

"The minister further observes that in order to determine the responsibility of employers and to enable appropriate action to be taken not only with regard to safeguarding the interests of -- first -- the employees . . ."

THE COMMISSIONER: You are putting in the word "first".

MR. KELLOCK: I am putting in the word "first" and I am putting in the word "secondly" --

". . .of the public, but also of the industry itself".

Now, my lord, that must mean the shareholders.

"it is essential for the government to be fully advised . . ."

and so on. Therefore my friend, in simply presenting his argument from the standpoint of the employees and the public and not from the standpoint of all three, presenting a case from that point of view, is not looking at or presenting to your lordship the picture from all three standpoints but only from the standpoint of two classes, and he is making a case on behalf of those two classes. That is all I want to point out.

can around you are presenting the point of view of the Commission. That is a fair situation to labour.

MR. KELLOCK: That is all I wanted to draw attention to. But I want also to point out that my friend sets out on page 5 of his brief what the order in council says. In fact I want to read from the order in council itself.

"The minister further observes that in order to determine the responsibility of employers and to enable appropriate action to be taken not only with regard to safeguarding the interests of -- first -- the employees . . ."

THE COMMISSIONER: You are putting in the word "first".

MR. KELLOCK: I am putting in the word "first" and I am putting in the word "secondly" --

". . .of the public, but also of the industry itself".

Now, my lord, that must mean the shareholders.

"It is essential for the government to be fully advised . . ."

and so on. Therefore my friend, in simply presenting his argument from the standpoint of the employees and the public and not from the standpoint of all parties, presenting a view from that point of view, is not looking at or presenting to your lordship the picture from all three standpoints but only from the standpoint of two classes, and he is making a case on behalf of those two classes. That is all I

MR. McRUER: Three classes.

THE COMMISSIONER: He divided them into three.

MR. KELLOCK: He divides them into three. I will say three. It is presented from that point of view, but it is not presented at all from the standpoint of the industry itself, and that is the shareholders. The point of view presented on behalf of the employees has been dealt with. That point of view is that there should be higher wages. It has also been advanced that the selling price that the industry gets for its products should be lowered, and that the tariff should be lowered so as to bring about that result.

(Page 16680 follows)

MR. McNAB: Three classes.

THE COMMISSIONER: He divided them into three.

MR. KELLOCK: He divides them into three. I will say three. It is presented from that point of view, but it is not presented at all from the standpoint of the industry itself, and that is the standpoint before. The point of view presented on behalf of the employees has been dealt with. That point of view is that there should be higher wages. It has also been advanced that the selling price that the industry gets for its products should be lowered, and that the tariff should be lowered so as to bring about that result.

(Page 1668 follows)

Now, those two things, my lord -- unless the industry is making an excessive return, and I want to deal with that separately; I submit it has not been doing anything of the kind -- those two things are contradictory. Wages, it is a truism to say, can only be paid out of the price. If the price is reduced and overhead remains the same and material remains the same, how can the wages be increased. My friends don't explain that. They simply are, to use the phrase, playing off both ends against the middle, the middle being the industry itself, the shareholders.

THE COMMISSIONER: Pardon me a moment; is there some part of your factum which you are dealing with now?

MR. KELLOCK: I am coming up to section "D", my lord, which deals with the financial history of the companies, and at the same time I am dealing in advance with some of the theories which my friend expresses in his brief, and one particularly which he enunciated at pages 116 and 117 of his brief. Before I deal specifically with the financial history of the companies I want to clear the ground, if I may, by meeting my friend on some of these theories which he advances.

THE COMMISSIONER: Just before you proceed; I want to get my bearings. Where did you leave off in your own factum last?

MR. KELLOCK: I left off, my lord, at the end of section "G", which dealt with Japan. Then, I went to my friend's brief which dealt with the same thing, and I said all I had to say about that so I am now coming

you, those two things, my lord -- unless the industry is making an excessive return, and I want to deal with that separately; I submit it has not been doing anything of the kind -- those two things are contradictory. Wages, it is a truism to say, can only be paid out of the price. If the price is reduced and overhead remains the same and material remains the same, how can the wages be increased. My friends don't explain that. They simply say, to use the phrase, playing off both ends against the middle, the middle being the industry itself, the shareholders.

THE COMMISSIONER: Pardon me a moment: is there some part of your return which you are dealing with now?

MR. HELLICK: I am coming up to section "F", my lord, which deals with the financial history of companies, and at the same time I am dealing in rebuttal some of the theories which my friend expressed in his brief, and one particularly which he announced at pages 110 and 111 of his brief. Before I deal specifically with the financial history of the companies I want to clear the ground, if I may, by meeting my friend on some of these theories which he advances.

THE COMMISSIONER: Just before you proceed; I to get my bearings. Where did you leave off in your own factum last?

MR. HELLICK: I left off, my lord, at the end section "D", which dealt with Japan. Then, I went to the Dominion Brief which dealt with the same thing, I will, I hope, be now doing that for a few minutes.

up to section "D".

THE COMMISSIONER: Trade Associations are a separate section, "H".

MR. KELLOCK: Yes, and I am going to deal with that section next, my lord.

THE COMMISSIONER: Alright, take them at your own convenience.

MR. KELLOCK: My lord, perhaps before I go on with what I was doing, Mr. Hooper spoke to me this morning and I understand he wants to make a correction with regard to the 10% consignment shipments that he gave in his evidence to your lordship yesterday.

THE COMMISSIONER: Oh yes, the portion --

MR. HOOPER: I don't know what you took from that yesterday, my lord, whether you took that as the volume of artificial silk fabrics coming in --

THE COMMISSIONER: What I really took from that general statement of yours was that shipments on consignment were a very small proportion of the total shipments from Japan.

MR. HOOPER: Of the total shipments; you mean of fabrics, my lord -- not particularly fabrics?

THE COMMISSIONER: No, I didn't mean that particularly.

MR. HOOPER: That is what I tried to convey.

THE COMMISSIONER: What is it you want to say now?

MR. HOOPER: That is exactly what I wanted to say. That is what I thought I said.

THE COMMISSIONER: You are including raw materials?

up to section "D".

THE CHAIRMAN: Yes, consolidated or separate tenders.

MR. HUGGON: Yes, and I am going to deal with that section next, my lord.

THE CHAIRMAN: Right, take them at your own convenience.

MR. HUGGON: My lord, perhaps before I go on with what I was doing, Mr. Dwyer asked me to ask -- and I thought it would be best if I put it with regard to the 10% consignment allowance that he gave in his evidence to your lordship yesterday.

THE CHAIRMAN: Oh yes, the portion --

MR. HUGGON: I don't know what you took from him yesterday, my lord, whether you took that as the value of unlicensed alike factories coming in --

THE CHAIRMAN: Yes, I have [illegible] that the allowance for consignment was a very small proportion of the total allowance from depot.

MR. HUGGON: Of the total allowance; you mean of factories, my lord -- not particularly February.

THE CHAIRMAN: No, I didn't mean that particularly.

MR. HUGGON: That is what I tried to convey.

THE CHAIRMAN: What is it you want to say [illegible]

MR. HUGGON: That is exactly what I wanted to [illegible] what is really I suppose I said.

THE CHAIRMAN: [illegible]

MR. HOOPER: Yes.

THE COMMISSIONER: Supposing you leave raw materials aside for the moment what percentage of the fabrics would you say are sent here on consignment?

MR. HOOPER: At the present time I would say 50% of the fabrics are imported on consignment. Last year you might say practically 100%, or 90%, was imported on consignment, because Fisher was bringing in by far the greater amount of fabrics.

MR. McRUER: There were not a great many coming in on account of the surtax.

THE COMMISSIONER: What you said yesterday was it was very difficult to get the Japanese exporter to ship on consignment. He wanted his money and cash in hand, but now you say he shipped 50% of his fabrics.

MR. HOOPER: Well, the Fisher importations are maybe one-third of the total coming to-day. It is a very large portion of it.

MR. KELLOCK: I understood Mr. Hooper's 10% applied to textiles, and fabrics we were dealing with at the moment but he didn't mean that.

THE COMMISSIONER: Well, we have it now.

MR. KELLOCK: That is the way the argument is presented on behalf of the employees. My friends do not divide in their argument between the public generally and the consumer; so far as I have been able to follow the consumer is the one from whose point of view the argument is mostly presented.

THE COMMISSIONER: Well, I suppose what really

MR. MORGAN: Yes.

THE COMMISSIONER: Supposing you have raw materials sales for the moment what percentage of the fabrics would you say are sent here on consignment

MR. MORGAN: At the present time I would say 50% of the fabrics are imported on consignment. Last year you might say practically 100%, or 90%, was imported on consignment, because Fisher was bringing in by far the greater amount of fabrics.

MR. MORGAN: There was not a great deal coming in on account of the duties.

THE COMMISSIONER: What you said yesterday was it was very difficult to get the Japanese exporter to ship on consignment. He wanted his money and cash in hand, but now you say he ships 50% of his fabrics

MR. MORGAN: Well, the Fisher importations are more pro-rata of the total coming through. It is a very large portion of it.

MR. [illegible]: I understand Mr. [illegible] supplied to textiles, and fabricot we were dealing with at the moment but he didn't mean that.

THE COMMISSIONER: Well, we have it now.

MR. MORGAN: That is the way the argument is presented on behalf of the employees. My friends do not divide in their argument between the public generally and the consumer; so far as I have been able to follow the consumer is the one from whose point of view the argument is mostly presented.

THE COMMISSIONER: Only I suppose also mostly

might be said is this that the public comprises, of course, the consumer. Everybody wears textiles, more or less. Then also there is this, that the public would also mean those who have to look on and see the country getting less revenue from the tariff on account of the protection of home industries.

MR. KELLOCK: Well, alright--

THE COMMISSIONER: Taxes might be elsewhere --

MR. McRUER: The exporters, too, I had in mind, in dealing with the public.

THE COMMISSIONER: The exporters might say also that they lose foreign markets because we exclude foreign merchandise from our markets. You cannot say when you use the words consumer and public you are using words that are absolutely synonymous. The word public is wider than the word consumer.

MR. KELLOCK: Well, I did not hear much from my friend about the public.

THE COMMISSIONER: I asked some time ago -- I asked to see, for instance, how our customs revenues have borne up under these high tariffs. That is ready, isn't it?

MR. McRUER: Yes, I have it ready.

THE COMMISSIONER: Put it in a little later on. So you see "public" means a little more than the word "consumer".

MR. KELLOCK: All I am saying, my lord, is we did not hear much from my friend about the point of view of the public as distinguished from the point of

might be said is this: that the public consider, of course, the consumer. Everybody wears textiles, more or less. There also there is this, that the public could also mean those who have to look on and see the country getting less revenue from the tariff on account of the protection of some industries.

Mr. MILLAR: Well, alright--

The COMMISSIONER: Issue might be elsewhere --

Mr. ROBSON: The exporters, too, I had in mind, in dealing with the public.

The COMMISSIONER: The exporters might say also that they lose foreign markets because we analyse foreign manufactures from our markets. You cannot say when you use the words consumer and public you are using words that are absolutely synonymous. The word public is wider than the word consumer.

Mr. MILLAR: Well, I did not hear much from my friend about the public.

The COMMISSIONER: I noted some time ago -- I noted to say, for instance, how our customs revenue have borne up under these high tariffs. That is not isn't it?

Mr. ROBSON: Yes, I have it ready.

The COMMISSIONER: Put it in a little later on, or you may find some a little more time for the consumer.

Mr. ROBSON: All I am saying, My Lord, is we will not hear much from my friend about the point of view of the public as distinguished from the point of

view of the consumer.

THE COMMISSIONER: We certainly heard something about the losses -- right on the Japanese question there you met his argument yesterday about the loss of our exports to Japan on account of the tariff.

MR. KELLOCK: Quite.

THE COMMISSIONER: There is the public considered from a point of view other than that of a consumer.

MR. KELLOCK: Very well, and I have dealt with that, and I want now, my lord, to come to the question of the point of view that my friend presents on behalf of the consumer.

Now, my lord, the point of view that my friend puts forward on behalf of this consumer is that the tariff is an expense to him, that if it were not for the tariff he could buy his goods elsewhere than in Canada and buy them cheaper. Therefore he has no friendly feeling for the tariff, this consumer that my friend appears for. He regards it merely as an obstacle in the way of his getting things where he wants to buy them, and as an expense. Now, my lord, such a consumer can have no connection himself with industry which is in any way dependent upon tariff, either directly dependent, or an industry which in turn is dependent upon an industry which is protected because it sells to such an industry. Therefore, the consumer my friend talks about does not include those people because those people, of course, realize, if they think at all, that their ability to become consumers and to buy goods comes from the very industry

which depends on the tariff, either primarily or secondarily, and they do not object, and they do not regard the tariff as a mere expense to them. They do not object to paying the additional expense, if there is one, because their ability to buy at all comes from their connection with the industry which is dependent, either directly or indirectly, on tariff.

Now, my lord, that isn't all. The consumer that my friend appears for --

THE COMMISSIONER: You are talking of consumers who depend for their livelihood on the textile industry?

MR. KELLOCK: No, on any industry that is protected or on any industry, my lord, which exists by reason of finding a market for its product either to the protected industry or to the persons employed or maintained in any protected industry.

Now, my lord, that isn't all. The consumer that my friend talks about, and appears for, cannot only be not directly or indirectly connected with an industry which is dependent on the tariff, but he cannot be a person who finds any market for either his services, such as a professional man, or the product which he produces such as the farmer, in the population which is maintained by an industry supported either directly or indirectly by a tariff. One can take a concrete illustration. I have in mind a particular town, which I do not need to mention, which has a population of around three or four thousand people. It has got a boot and shoe factory. It has got a cloth mill,

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CHARTERED ACCOUNTANT
TORONTO

which depends on the tariff, either primarily or secondarily, and they do not object, and they do not regard the tariff as a mere expense to them. They do not object to paying the additional expense, if there is one, because their ability to buy at all comes from their connection with the industry which depends, either directly or indirectly, on tariff.

Now, my lord, that isn't all. The consumer may be taxed another way --

THE COMMISSIONER: You are talking of consumers who depend for their livelihood on the textile industry.

Mr. MACDONALD: No, on any industry that is protected or on any industry, my lord, which exists by reason of finding a market for its product either to the protected industry or to the persons employed or maintained in any protected industry.

Now, my lord, that isn't all. The consumer that my friend talks about, and represents for, cannot only be not directly or indirectly connected with an industry which is dependent on the tariff, but he cannot be a person who could say receiving the prices his services, such as a professional man, or the product which he produces such as the farmer, is the regulated which is maintained by an industry, either directly or indirectly by a tariff. One can take a concrete illustration. I have in mind a particular case, which I do not need to mention, which has a population of around three or four thousand people. It has not a boot and shoe factory. It has not a cloth dyeing

It has got a knitting mill, and it has got a manufacturing plant that makes pharmaceutical products. Now, my lord, the pay rolls of these mills are in the neighbourhood of seven or eight hundred thousand dollars a year. I do not suppose that anybody who lives in that town, whether he is employed directly in any one of those industries, or whether he lives by contributing services or goods to the industries themselves, or the people employed in those industries, I do not suppose that any one of the population of that town regards the tariff as an expense, and does not gladly pay anything extra that may be involved in meeting his own particular wants, because he knows his very existence comes from the existence of these industries, and you can say the same thing for the agricultural population which surrounds the town. They find an outlet for their products, whether it is wool or whether it is food stuffs which they produce; they find a market for what they produce in that town, and the intelligent members of such an agricultural community must recognize that the tariff a mere expense to them, but it maintains and provides a market for their goods. So, my lord, when one goes to look in Canada to-day for the consumer for whom my friend appears my friend may know his name and address and telephone number, but I have the greatest difficulty in tracing it and knowing just where to find it, because it is very difficult --

MR. McRUER: He hasn't got a telephone.

MR. KELLOCK: He hasn't got a telephone.

It has got a knitting mill, and it has got a cane work
ing plant that makes pharmaceutical products. Now,
my lord, the day rolls of these mills are in the neig
bourhood of more or less fourteen hundred hands a
year. I do not suppose that anybody who lives in this
town, whether he is employed directly in any one of
those industries, or whether he lives by contributing
services or goods to the industries themselves, or
the people employed in those industries, I do not
suppose that any one of the population of that town
regards the tariff as an expense, and does not glady
pay anything extra that may be involved in meeting
his own particular needs, because he knows his very
existence comes from the existence of these indus-
tries, and you can see the same thing for the rural
rural population which surrounds the town. They fin
an outlet for their produce, whether it is wool or
whether it is food stuffs which they produce; they
find a market for what they produce in this town, and
the intelligent producers of such an agricultural
community must recognize that the tariff a mere
expense to them, but it maintains and provides a market
for their goods. So, my lord, when one goes to
look in Canada to-day for the consumer for whom my
friend [illegible] and [illegible]
[illegible], but I have the [illegible]
in tracing it and trying just where to find it, but
it is very difficult --

Mr. Martin: He hasn't got a [illegible].

Mr. Fullerton: He hasn't got a [illegible].

MR. McRUER: No, he cannot afford one.

MR. KELLOCK: Then, my lord, we get down to a very small portion of the population.

MR. McRUER: That haven't a telephone?

MR. KELLOCK: Yes.

MR. McRUER: You are mistaken on that.

MR. KELLOCK: Even in the rural districts --

MR. McRUER: I will take you into Toronto and show you a few streets where there are not any phones.

MR. KELLOCK: That is exactly the point I am coming to, that the consumer, whose point of view my friend presents, must form a very small part of the population of this country to-day, and the presentation of this -- I will use the word "narrow" for want of a better word; my English perhaps is poor -- that the presentation of the point of view of such a class, if you can find it, is not the point of view of the mass of the population of this country. Now, that is my submission to your lordship. All consumers, or the bulk of the consumers of this country, are producers, and they are producers --

THE COMMISSIONER: What is your argument, that the mass of the population of the country is satisfied with the tariff as it is?

MR. KELLOCK: They are satisfied with tariffs, my lord. The question of the height of the tariff is quite a different thing, but I am directing my argument to my friend's theory that the tariff in Canada is just a tax on the consumer. He gets nok benefit from

Mr. [illegible]: No, he cannot afford one.

MR. [illegible]: Then, my lord, we get down to a very small portion of the population.

Mr. McMURTRY: That haven't a telephone.

MR. [illegible]: Yes.

MR. McMURTRY: You are mistaken on that.

MR. [illegible]: Even in the rural districts --

MR. McMURTRY: I will take you into Toronto and show you a few streets where there are not any phones.

Mr. McMURTRY: That is exactly the point I am coming to, that the consumer,whose point of view my friend presents, must form a very small part of the population of this country to-day, and the enumeration of this -- I will use the word "enumeration" for want of a better word; my English vocabulary is poor -- that the enumeration of the point of view of such a class, if you can find it, is not the point of view of the mass of the population of this country, that is my submission to your lordship. All consumers,or the bulk of the consumers of this commodity are producers, and they are producers --

THE CHAIRMAN: What is your argument, that the mass of the population of the country is satisfied with the tariff as it is?

MR. [illegible]: They are satisfied with tariffs, my lord. The question of the height of the tariff is [illegible]

it. It is just an obstacle and expense to him.

MR. McKUER: I did not say he got no benefit; I said two provinces out of nine got benefit.

MR. KEILOCK: How many?

MR. McKUER: I said two provinces out of nine were the ones that benefited.

MR. KEILOCK: Two provinces out of nine; well, very well. Now, my lord, if an industry which is dependent on the tariff is the only section of the community that gets a benefit from the tariff -- my friend uses the word "benefit", "privileged class", they are the people that get the benefit -- if an industry dependent on the tariff is the only section of the community that gets any benefit from that tariff my submission is, my lord, that the tariff for such an industry would not last over night. Why would it? Why would the rest of the population stand by and provide the means whereby that industry can get more for its products than it otherwise would, if the community as a whole do not get benefit?

Now, my submission is it is absurd to present that sort of point of view. It does not look at the whole picture, and that is all that I am submitting to your lordship. The aim of any state is to provide gainful employment for the bulk of its population, and you cannot do that apart from industry, and you cannot have industry, as our experience shows, without having tariff, and I am not speaking of the height of the tariff, my lord. I will come to that. This tariff

it. It is just an obstacle and avenue to him.

Mr. MOTTER: I did not say he got no benefit; I said two provinces out of nine got benefit.

Mr. HARCOURT: Now nearly

Mr. MOTTER: I said two provinces out of nine were the ones that benefited.

Mr. HARCOURT: Two provinces out of nine; well, very well. Now, my lord, if an industry which is dependent on the tariff is the only section of the community that gets a benefit from the tariff -- my friend uses the word "benefit", "privileged class", they are the people that get the benefit -- if an industry dependent on the tariff is the only section of the community that gets any benefit from that tariff my submission is, my lord, that the tariff for such an industry would not last over night. Why would it? Why would the rest of the population stand by and provide the means whereby that industry can get more for its products than it otherwise would, if the community as a whole do not get benefit?

Now, my submission is it is absurd to present that sort of point of view. It does not look at the whole picture, and that is all that I am suggesting to your lordship. The aim of any tariff is to grant a fair equivalent for the work of its population. We have industry, as our experience shows, without the tariff, and I am not speaking of the height of the tariff, my lord. I will come to that. It is that

my friend speaks about, he says it provides -- page 268 of his brief -- he says it provides a special fund in the hands of the industry that has benefited by it, as though you could go to that industry and that industry would operate and carry on without the benefit of this tariff at all; the existence of the tariff just puts so much more money in the hands of this industry that it would not have apart from the tariff. The truth is, of course, that the industry would not be there without the tariff. It could not exist without it. It does not provide a special fund, an extra fund, in the hands of the industry, but it enables the industry to operate. I have no objection, and nobody in the industry, in this industry that I represent, or any other industry, I would not think would have any objection, if the tariff is too high and the return is excessive, in having it reduced. All that we are asking for is that there should be sufficient tariff to make a reasonable return. I may disagree with my friend as to what a reasonable return is. At one stage of the proceedings my friend voiced the view that that return on capital in an industry, which exceeded what a man would get if he had his money in a bond, was something terrible.

MR. McRUER: I never voiced any such point of view.

MR. KELLOCK: Didn't you? Well, I will give you page and line for that.

MR. McRUER: I never did and you know it. It is no use making such a statement as that.

MR. KELLOCK: My friend is just full of contra-

Friend says, he says it provides -- page 368 of his brief -- he says it provides a special fund in the hands of the industry that has monopolized it, as though you could go to that industry and the industry would operate and carry on without the benefit of this tariff at all; the existence of the tariff gives so much more money in the hands of this industry that it would not have aspect from the tariff. The thing is, of course, that the industry would not be there without the tariff. It would not exist without it. It does not provide a special fund, an extra fund, in the hands of the industry, but it enables the industry to operate. I have no objection, and nobody in the industry, in this industry that I represent, or any other industry, I would not think would have any objection, if the tariff is too high and the returns is excessive, in having it reduced. All that we are asking for is that there should be sufficient tariff to make a reasonable return. I may disagree with my friend as to what a reasonable return is. One aspect of the proceedings my friend wished the view that that return on capital in an industry, which exceeded what a man would get if he had his money in a bank, was unreasonably excessive.

MR. MACLEAN (Queens): Well, I will give my friend credit for not like Dr. Clark.

MR. MACLEAN (Queens): I remember one Dr. Clark who was in Parliament. He was a man of a different type.

MR. MACLEAN (Queens): Well, I will give my friend a compliment by saying that he is not like Dr. Clark.

MR. MACLEAN (Queens): I remember one Dr. Clark. He was a man of a different type.

dictions. I will give page and line for that in the proper place.

MR. McRUER: I never made any such statement. It is that kind of thing that is very annoying.

MR. KEILOCK: I am sorry to disagree with my friend, but I do disagree.

MR. McRUER: What page?

MR. KEILOCK: I have got it here; I am going to come to it.

MR. McRUER: You say so, but you have got to read the evidence.

MR. KEILOCK: I will read the evidence.

MR. McRUER: (To reporter) Make me a copy of that so there will be no mistake about it.

MR. KEILOCK: My friend doesn't need a copy.

MR. McRUER: I want it accurate.

MR.KEILOCK: So far as investment of capital in industry is concerned the tariff, in my submission, with regard to industries which are enabled to operated by reason of the tariff, simply exists in order that capital will be invested in that industry, and will be given a return which is commensurate with the return that it would get if invested otherwise, and commensurate with the risks involved as compared to the risks involved in other enterprises; in other words, simply to attract capital into such an industry. For what purpose? For the purpose that the country may have the benefits which flow to the country as a whole from the presence of such an industry in the country.

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dictions. I will give you one line for that in the [illegible] Lawn.

Mr. [illegible]: I never made any such statement. It is that kind of thing that is very annoying.

Mr. [illegible]: I am sorry to disagree with my friend, but I do disagree.

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Mr. [illegible]: I will read the evidence.

Mr. [illegible]: (To reporter) make me a copy of that so there will be no mistake about it.

Mr. [illegible]: My friend doesn't need a copy.

Mr. [illegible]: I want it accurate.

Mr. [illegible]: So far as investment of capital in industry is concerned the tariff, in my judgment, with regard to industries which are enabled to operate by reason of the tariff, simply enables the owner that capital will be invested in that industry, and will give a reason which is consonant to the return that it would get if invested elsewhere, and consequently the money involved is conveyed to the whole industrial life of the country; in other words, simply to attract capital to the work or industry. For what purpose? For the purpose that the country may have the benefits which flow to the country as a whole from the presence of such an industry in the country.

That is the object of the tariff, as I understand it.

I submit that my friend's presentation ignores these fundamental facts. Capital, my lord, as your lordship knows, it is a trite thing to say it is fluid. It won't be attracted into an industry at all and it won't continue in the industry unless the return is commensurate with the return on capital in other comparable enterprises where the risks are comparable. So that my submission to your lordship is that the problem here must be, are the returns on capital sufficient to ensure the continuance in the industry of the capital already employed, and to ensure the development of the industry by the re-investment of profits and the investment of new capital, or are the returns excessive or inadequate? One of the things which your lordship is directed to inquire into is the question of profits. My submission is, and I am going to give your lordship figures, that the average returns in the industry over the last ten years, 1926 to 1955, are less than 5%; to be accurate 4.8%.

THE COMMISSIONER: In what years?

MR. KELLOCK: 1926 to 1955, my lord; 4.8% is the figure. My submission is that the standpoint -- the standard by which return on capital in an industry protected by a tariff is to be measured is not different than the standard by which return on capital in an industry not protected is to be measured, if one can find in Canada to-day such an industry. There may be some.

Mr. [illegible]: [illegible]

I submit that my friend's presentation involves three fundamental facts. Capital, my lord, as your lordship knows, it is a delicate thing to say it is that it won't be attracted into an industry at all and it won't continue in the industry unless the return is commensurate with the return on capital in other comparable enterprises where the risks are comparable. So that my submission to your lordship is that the problem here must be, are the returns on capital sufficient to ensure the continuance in the industry of the capital already employed, and to ensure the development of the industry by the re-investment of profits and the investment of new capital, or are the returns excessive or inadequate? One of the things which your lordship is directed to inquire into is the question of profits. My submission is, and I am going to give your lordship figures, that the average profit in the industry over the last ten years, from 1955 to 1964, was less than 5%; to be accurate 4.9%.

The COMMISSIONER: In what year?

Mr. [illegible]: 1955 to 1964, my lord; 4.9% is the figure. My submission is that the disagreement -- the evidence by which returns on capital is a fair [illegible] by a tariff is to be measured is not of [illegible] the measure by which returns on capital in an industry are [illegible] to be measured. If you had that in mind [illegible] such an industry. There may be

Now, my lord, there was one small theory that my friend expressed many times throughout the hearing. I just want to take a moment to deal with it, and that was that where a sum of money was invested in an industrial undertaking many years ago, and part or all of the earnings of that investment had been re-invested in the development of the business, the earnings, we will say, in the present year, my friend kept on repeating, were such a per cent. on the original investment which had been made many years ago, and, of course, the percentages which my friend mentioned from time to time were large, as they naturally would be.

Now, my submission is that is a false argument, that one does not make profits to-day on the amount that one invested 10 or 30 years ago, that one makes a profit to-day on the capital actually invested to-day. If I put my money in a bank ten years ago and I draw out the interest every year what I get this year in the way of interest is the same, if the rate is the same,as it was ten years ago, but if I leave the interest in and let it accumulate then the interest I get to-day is not the interest on my original deposit in the bank, but it is the interest on what was there this last year. Now, I submit that is perfectly obvious, and that is a false statement -- and I am not using that in any invidious way -- it is a false statement to say that the profits made this year --

THE COMMISSIONER: You mean fallacious.

MR. KELLOCK: Thank you, my lord, I would much rather use that. I want to minimize the points of disagreement with my friend.

MR. McRUER: I think you magnify them.

MR. KELLOCK: That is a fallacious statement, and it has done harm to the industry, I repeat, to advance and to repeat that statement which my friend did from time to time throughout the hearing.

THE COMMISSIONER: What statement?

MR. KELLOCK: This, my lord, that the profit made this year is so much percentage on the original investment. It is not on the original investment. It would not have been made except for the re-investment of the profits in the industry.

MR. McRUER: That is not what I said at all.

MR. KELLOCK: I have the greatest difficulty in being able to understand what my friend does say, because everything I say my friend says he contradicts now. If my friend didn't say it, that is the end of it.

MR. McRUER: I certainly did not say it.

MR. KELLOCK: My friend doesn't like it now any better than I do.

MR. McRUER: I didn't say it. If I had liked it I would have said it.

MR. KELLOCK: I want to come directly to the contention which my friend enunciates at page 117 of my friend's brief, and as this is in writing perhaps we won't have any disagreement.

MR. McRUER: You will find what is there, no doubt.

Mr. [illegible]: Does you, by Jove, I really mean rather use that. I rest to minimize the voices of disagreement with my friend.

Mr. [illegible]: I turn you [illegible] them.

Mr. [illegible]: That is a [illegible] statement, as it has done harm to the industry, I regret, to [illegible] and to repeat that statement which my friend did from this [illegible] [illegible].

[illegible]

Mr. [illegible]: Why, my lord, that the result [illegible] this year is so much percentage on the original investment. It is not on the original investment. It could not have been made except for the re-investment of the profits in the industry.

Mr. [illegible]: That is not what I will be at.

Mr. [illegible]: I have the greatest difficulty in being able to understand what my friend does say. Because everything I say my friend says he contradicts me. If my friend distrays it, that is the end of

Mr. [illegible]: I certainly did not say it.

Mr. [illegible]: My friend doesn't like it now any better than I do.

Mr. [illegible]: I didn't say it. If I had liked it I would have said it.

Mr. [illegible]: I want to come directly to the contention which my friend enunciates at page 117 of my friend's brief, and on this is in anything [illegible] [illegible] [illegible].

Mr. [illegible]: [illegible]

MR. KELLOCK: Perhaps I can paraphrase it to save time without incurring contradiction from my friend.

MR. McRUER: If you do it accurately you will.

MR. KELLOCK: As I understand it the theory is that profits earned over a reasonable return on the original capital should not be allowed to earn profit if left in the business. Now --

MR. McRUER: No, I didn't say that.

MR. KELLOCK: Well, I have a lot of trouble, I think.

THE COMMISSIONER: You say you are going to read what he says?

MR. KELLOCK: I said I was going to paraphrase it.

THE COMMISSIONER; You began by saying he put it in writing so it cannot be contradicted; what is it you are referring to on page 117?

MR. KELLOCK: The paragraph in the middle of the page. If I cannot put it in my own language --

THE COMMISSIONER: Where he says "it is submitted"--

MR. KELLOCK: I am only showing whether I understand what my friend is driving at by putting it in my own language.

THE COMMISSIONER: What is the statement you question?

MR. KELLOCK: This statement --

"It is submitted that where a protected industry does no substantial export business, all capital created through the operation of the business, over and above a reasonable return to the investor on

MR. ROLLINS: Perhaps I can paraphrase it to save time without incurring correctation from my friend.

MR. MORRIS: If you do it seems only you will.

MR. WHITNEY: As I understand it the lessor is that profits earned over a reasonable return on the original capital should not be allowed to earn profit if left in the business. Now --

MR. MORRIS: No, I didn't say that.

MR. WHITNEY: Well, I have a lot of trouble, I think.

THE CHAIRMAN: You say you are going to read what he says?

MR. WHITNEY: I said I was going to paraphrase it.

THE CHAIRMAN: You began by saying he put it in writing so it cannot be contradicted; why is it you are reluctant to do that?

MR. WHITNEY: The paragraph is the middle of the page. If I cannot put it in my own language --

THE CHAIRMAN: Have he says "it is another

MR. WHITNEY: I am only making matter I where what my friend is driving at by putting it in my own language.

MR. MORRIS: What is the statement?

PRESIDENT

MR. WHITNEY: This statement --

"It is contended that where a protection insurance has an industrial insurance business, all insured crossed through the operation of the business, and thus a substantial return to the insurance be

"capital invested by him"--

Now, that is his first capital, I would understand from that.

"-- has been contributed"--

MR. McRUER: No, no; he can leave the reasonable return either in the business or draw it out. It isn't necessarily his first capital. I have made it if he drew out six per cent and left in four; then, that four is part of the reasonable return.

MR. KELLOCK: "It is further submitted that protection"--

THE COMMISSIONER: You skipped. He says:

"-- all capital created through the operation of the business, over and above a reasonable return to the investor on capital invested by him, has been contributed by the consumer and not by the investor".

That is his statement.

MR. KELLOCK: That is his statement.

THE COMMISSIONER: Now, deal with that.

MR. KELLOCK: Well, my lord, put in that way I do not propose to quarrel with that.

MR. McRUER: When we get down to reading there is not much quarrel about it.

MR. KELLOCK: If I am providing entertainment for my friend I am also very happy. What I am coming to, my lord, is if a person in the industry that I represent, or any industry where there is a tariff concerned, and this industry my friend is dealing with, that if a person was fortunate enough

"capital invested in him"--

now, that is his first capital, I would understand this but.

"-- has been continued"--

Mr. McKim: No, no; he can have it's reasonable return either in the business or draw it out. It isn't necessarily his first capital. I have made it if he draw out six per cent and left in four; then that four is part of the reasonable return.

Mr. [illegible] "It is [illegible] that [illegible]"--

The Chairman: You skipped. He says:

"-- all capital invested through the operation of the business, over and above a reasonable return to the investor on capital invested by him, has been contributed by the consumer and not by the investor".

That is his statement.

Mr. [illegible]: That is his statement.

The Chairman: Now, deal with that.

Mr. [illegible]: [illegible]

I do not propose to quarrel with that.

Mr. McKim: When we get down to reading there is not much quarrel about it.

Mr. [illegible]: If I am producing entertainment for my friend I am also very happy. What I am coming to, my Lord, is if a person in the industry [illegible] I represent, or any industry where there is a [illegible] connection, and this industry my friend is [illegible]

to have been able to make what my friend would call an unreasonable profit he would be better advised to take that out of the business at once and put it some place else.

MR. McRUER: No, no, because the business will return an unreasonable profit so why not leave it in?

MR. KELLOCK: My lord, I would like to have a short space of time without interruption.

MR. McRUER: I beg your pardon.

MR. KELLOCK: My lord, if you come to the point--

THE COMMISSIONER: I think the gist of the argument Mr. McRuer was making was that the tariff should be adjusted so that the industry will not be able to make more than a reasonable profit.

MR. McRUER: That is the whole thing.

MR. KELLOCK: Nobody asks anything else.

MR. McRUER: That is the whole thing; then, there is no quarrel with me.

MR. KELLOCK: Well, I would like to be able to address your lordship without so much interruption.

THE COMMISSIONER: You see, that is the whole thing. Now, go on that basis.

MR. KELLOCK: I am going to proceed on that basis, my lord, but if you are going to apply that theory then you have got to get down to what is practical, and if there is going to be any question as to what is unreasonable profit, in other words, if my friend is going to have some machinery to apply, and I am in the industry to which this principle is going to be applied, I would be very sure to take out

to have been able to make what my friend would call an unreasonable profit he would be better advised to take that out of the business at once and put it some place else.

MR. MORGAN: No, no, because the business will return an unreasonable profit so why not leave it in.

MR. MELLOWS: My lord, I would like to have a short space of time without interruption.

MR. MORGAN: I beg your pardon.

MR. MELLOWS: My lord, if you come to the point-

THE COMMISSIONER: I think t'a plat of the argument, that making and using the land, should be alienated by that from industry will not be able to make more than a reasonable profit.

MR. MELLOWS: That is the whole thing.

MR. MELLOWS: Money makes anything else.

MR. MORGAN: That is the whole thing here. There is no quarrel with me.

MR. MELLOWS: Well, I would like to be able to address your lordship without so much interruption.

THE COMMISSIONER: You see, that is the whole thing. Go on Mr. Mellows.

MR. MELLOWS: I am going to proceed on that basis, so LAYS, but if you are going to apply that theory then you have got to be sure exactly what is reasonable, and if there is going to be the question as lydon, is reasonable profit, is other money, if taken in going through and conclusive to really, but I am in the inquiry, to which have publicity is going to be applied. I would be very glad to have

of it anything that I might think that anybody -- and I would have to go to quite an extreme -- I would have to take out of that, and not re-invest in the industry in development anything that somebody like my friend might come along and say "for the last ten years you have made excessive profit; it is true you have bought machinery and so on but I am going to chop off one hundred thousand or two hundred thousand dollars off the assets invested in your industry and I am going to set a tariffx rate accordingly, and you can only make a profit as though you didn't have that one hundred or two hundred thousand dollars there". In other words, my lord, any such theory as that, while it sounds innocent, and in the mere statement of it nobody would disagree with it, nevertheless if we get down to what is practical, and something that is going to be put into force, to apply that would have the effect of deterring the very thing which I understand tariffs are here to encourage, that is encouragement of the re-investment of the returns on capital in the industry in the building up and development of that industry, if it is a practical thing at all, and I say, my lord, that nobody would be foolish enough --

THE COMMISSIONER: Are you meeting the point that you started out to meet, the point being whether or not the tariff should allow an industry to make what Mr. McRuer would call unreasonable profits, even if the unreasonable profits are re-invested in the industry? The root of the thing it this; the tariff

allows the industry to make, under proper management, what ought to be reasonable profits.

MR. KELLOCK: I agree with you.

THE COMMISSIONER: Can you say no matter how high they are they are not unreasonable if the industry reinvests them in itself?

MR. KELLOCK: No, I don't maintain that for a moment.

THE COMMISSIONER: What Mr. McRuer has been saying and arguing is that you made unreasonable profits, and that even if you did re-invest them in your own industry by expanding your plant and so on, you should not ask the consumer to pay additional interest on that re-investment. That is his case. I suppose you are going to say that the industry never did make unreasonable profits, and it is not trying now to make unreasonable profits.

MR. KELLOCK: Certainly not for the last number of years that are important. All I say about the thing is this, my lord, that if this theory is going to be put into force --

THE COMMISSIONER: You cannot stop at the last few years. The last few years, of course, are the most important, but the history of past years also will throw a light on the future; so don't forget that.

MR. KELLOCK: No. All I say, my lord, is if this theory is going to be translated into some practical action, apart from setting the level of the tariff -- I have no objection to that at all. That

allows the industry to make, under proper conditions, what ought to be reasonable profits.

Mr. [illegible]: I agree with that.

THE COMMISSIONER: Can you say no matter how high they are they are not unreasonable if the industry relaxes them in itself?

Mr. [illegible]: No, I don't mainlain that for a moment.

THE COMMISSIONER: That's, perhaps has been said and argument is that you made unreasonable profits, or that even if you did re-invest them in your own industry by organizing your plant and so on, you should not ask the consumer to pay additional interest on the re-investment. That is his case. I suppose you are going to say that the industry never did make unreasonable profits, and it is not trying now to make unreasonable profits.

Mr. [illegible]: certainly not for the last number of years that are important. All I say about the thing is this, my Lord, that if this theory is going to be put into force --

THE COMMISSIONER: You cannot stop at the last few years. The last few years, of course, are the most important, but the history of past years also will throw a light on the future; so don't forget that.

Mr. [illegible]: [illegible] in this country -- [illegible] practical matter, apart from nothing the level of the world -- I have no objection to that at all.

is the proper way, in my submission, to set the level of the tariff, and preventing, if you like, excess of profits, if such a thing is possible, but if it is going to be translated into some practical action, apart from that, then I submit, my lord, it will have--

THE COMMISSIONER: What do you mean by practical action apart from that.

MR. KELLOCK: Well, my friend --

THE COMMISSIONER: What have you in mind?

MR. KELLOCK: I don't know. What is the sense of putting forward a theory --

THE COMMISSIONER: So long as you are simply answering Mr. McRuer he wound up by saying that the instrument for the remedy which he had in mind was the tariff.

MR. McRUER: I thought I made that as clear as it could be. I said I was asking for no panacea.

THE COMMISSIONER: What have you in mind?

MR. KELLOCK: I don't know. I don't know what my friend has; if my friend has nothing, alright. All I said is if anything is to be done in any other way --

THE COMMISSIONER: If you both agree we are talking only of the tariff, what should be done with the tariff, then I know you have common ground, but if you are talking of something else you better define it.

MR. KELLOCK: There is taxation, the income tax is one way.

MR. McRUER: That would have to apply to all

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CHARTERED ACCOUNTANTS
AUDITORS
TORONTO CANADA

is the proper way, in my submission, to get the level of the tariff, and preventing, if you like, excess of profits, if such a thing is possible, but if it is going to be translated into some practical action, [illegible] from that, then I submit, my lord, it will have

THE COMMISSIONER: What do you mean by practical action apart from that?

MR. [illegible]: Well, my friend --

THE COMMISSIONER: What have you in mind?

MR. [illegible]: I don't know. That is the game of putting forward a theory --

THE COMMISSIONER: So long as you are simply answering me, cannot he ought to tell me what the instructions for the supply which he had in mind was to tariff?

MR. [illegible]: I thought I made that as clear as it could be. I said I was asking for no payment.

THE COMMISSIONER: What have you in mind?

MR. [illegible]: I don't know. I don't know what my friend has; if my friend has nothing, right. All I said is if anything is to be done in other way --

THE COMMISSIONER: If you both agree on the taking only of the tariff, what should be done with the tariff, then I know you have common ground, but if you are talking of something else you [illegible] I [illegible]: There is another, the income tax is one way.

MR. [illegible]: That would have to apply to all

companies whether they operated as tariff protected ones or not.

MR. KELLOCK: It all gets down, my lord, as to what is a reasonable profit; that is all, and your lordship has not had any help from my friend.

THE COMMISSIONER: Well now, you give me the help.

MR. KELLOCK: As far as the witnesses are concerned the only expert who might be expected to give your lordship help on that was Mr. Howson and he said he had made no study of the risks involved in this industry, and was not in a position to say what a reasonable or unreasonable return might be.

THE COMMISSIONER: You will have to leave it to me, then.

MR. KELLOCK: I have got to leave it to your lordship.

THE COMMISSIONER: Well, I will take a few minutes to think that over.

-- The Commission adjourned for a short recess.

(page 16705 follows)

[illegible] whether they operated on a [illegible] protected [illegible] or not.

MR. KNIGHT: It all gets down, my lord, as to what is a reasonable profit; that is all, and your Lordship has not had any help from my friend.

THE COMMISSIONER: Well now, you give me the [illegible]

MR. KNIGHT: As far as the witnesses are concerned the only expert who might be expected to give your Lordship help on that was Mr. Jones and he said he had made no study of the risks involved in this industry, and was not in a position to say what a reasonable or unreasonable profit would be.

THE COMMISSIONER: You will have to leave it to my mind.

MR. KNIGHT: I have got to leave it to your Lordship.

THE COMMISSIONER: Well, I will take a few minutes [illegible] and [illegible].

-- The Commission adjourned for a short recess.

(Page [illegible] follows)

-- On resuming at 12 P.M.

MR. KELLOCK: My lord, I just want to say this onconcluding this branch of my argument - that supposing one could say that in times past something in excess of what might be called a reasonable return had been made and left in a business to-day and invested in machinery and plant, the fact, of course, that that is there affects the value and has affected the value of the Companies shares, and the man that bought yesterday or to-day bought on the basis of that valuation being there and that no question was to be raised as to the Company being able to make a return on it. Now, if one is to apply this theory of my friend, make an investigation, come to a conclusion that some excess earnings in times past have been there and are there to-day, if there is not a tariff so as to enable the company to make a profit on the basis of the investment of its capital, after deducting that excess, you immediately expropriate in the hands of the shareholders, who may have purchased many or all of them since those profits were earned, you simply expropriate a part of the value of his securities, and my submission is that that would be a most unfair thing to do to the investor who has purchased on the face of the existing situation.

I notice on page 422 of his brief myfriend says this, after dealing with the division of shares, the split of shares and their distribution broadcast in the hands of investors who have bought from persons

-- The Vacation Bill 1.

MR. KERLOOKE: My lord, I just want to say this concerning this branch of my argument - that supposing one could say that in times past something in excess of what might be called a reasonable return had been made left in a business to-day and invested in machinery and plant, the fact, of course, that that is there affects the value and has affected the value of the companies shares, and the man that bought yesterday or to-day bought on the basis of that valuation being there and that no question was to be raised as to the company being able to make a return on it. Now, if one is to apply this theory of my friend, make an investigation, come to a conclusion that some excess earnings in times past have been [illegible] is not a tariff so as to enable the company to make a profit on the basis of the investment of its capital, after deducting that excess, you immediately appropriate in the hands of the shareholders, who may have bought many or all of them since those profits were earned, you simply appropriate a part of the value of his [illegible], and my submission is that that would be a most unfair thing to do to the investor who has [illegible] on the face of the existing situation.

I [illegible] after dealing with the division of excess, my lord, the [illegible]

who were originally interested in the business, my friend says:

"The result is that the original investors have no doubt been able, at appropriate times, to liquidate their bonus shares through the Stock Exchange and now they are widely distributed in the hands of many investors who have purchased them, not from the Company but from those who had them to sell."

And he continues that argument, and over on the next page in the last paragraph, the opening part of the first sentence is:

"It is difficult to suggest that anything can be done to remedy what has been done in the past."

So that my submission is that dealing with the situation to-day, the investment of capital that is actually invested to-day, that it would be unfair to put into practice any such theory as my friend suggests, it would be grossly unfair to people who have acquired shares in the hundreds or thousands of companies operating industries dependent upon the tariff and it would amount to nothing less than expropriation.

THE COMMISSIONER: Well, is not this rather directed to the future--"unless some measure of investment control is adopted," he says.

MR. KELLOCK: As to the future, yes, my lord.

THE COMMISSIONER: I mean that is the paragraph you are starting to read. He says:

who were originally interested in the business, my friend says:

"The remarks of Sir Henry Drummond have no doubt been made, at appropriate times, to indicate that bonus shares through the stock exchange and now they are widely distributed in the hands of many investors who have purchased them, not from the company but from those who had them to sell."

And he continues that argument, and over on the last page in the last paragraph, the opening part of the [illegible]:

"It is difficult to suppose that anyone can be [illegible] so that my submission is that dealing with the situation to-day, the investment of capital that is actually invested to-day, that it would be unfair to put into practice any such theory as my friend suggests, it would be grossly unfair to people who have acquired shares [illegible] industries dependent upon the tariff and it would [illegible]."

THE COMMISSIONER: Well, is not this rather [illegible] to the future-unless some measure of investment [illegible] is secured," he says.

MR. [illegible]: We do see future, yes, my lord.

THE COMMISSIONER: I mean that is the paragraph [illegible]

"It is difficult to suggest that anything can be done to remedy what has been done in the past." He does not suggest anything.

MR. KELLOCK: I agree with that.

THE COMMISSIONER: But it is suggested that unless some measure of investment control is adopted promoters will be soon amalgamating silk companies and many other textile companies -

"promoters will soon be amalgamating and merging the silk companies, the cotton companies and many other textile companies whose plants will justify re-appraisal, with a view to creating new bonus stock to be sold to the public in due course, and further applications will be made to the government for the maintenance of protection to safeguard the interests of widows and orphans."

MR. KELLOCK: I am not quarrelling with that.

THE COMMISSIONER: That is only one meaning.

MR. KELLOCK: I am merely saying, my lord, that if you attempt to make an enquiry now as to what is invested now, whether what is invested now is the result of reasonable or excess profits ---

THE COMMISSIONER: We have been doing that.

MR. KELLOCK: Oh quite, yes, but if you do it for the purpose, my lord, of setting a tariff ---

THE COMMISSIONER: Unless you know the basis how are you going to have any guide for the future?

MR. KELLOCK: I quite agree with that.

"It is difficult to suggest that anything can be done by [illegible] and you have been [illegible] the door [illegible] -

Mr. [illegible]: I agree with them.

The [illegible]: But it is suggested that [illegible] some measure of investment control in [illegible] [illegible] in some [illegible] [illegible] and [illegible] textile companies -

"promoters will soon be [illegible] [illegible] the milk companies, the cotton companies and many other textile companies whose plants will [illegible] re-equipped, with a view to [illegible] new homes about to be sold to the public on the course, and further applications will be made to the government for the maintenance of protection to safeguard the interests of [illegible] and [illegible]."

Mr. [illegible]: I am not [illegible] [illegible].

The [illegible]: That is only one [illegible].

Mr. [illegible]: I am merely [illegible], by [illegible], that it [illegible] attempt to make an enquiry now as to what is [illegible] now, whether what is [illegible] now is the result of [illegible] or excess profits ---

The [illegible]: We have been [illegible].

Mr. [illegible]: Oh quite, yes, but if you [illegible] [illegible] ---

The [illegible]: [illegible]

The only point I am directing my argument to is, if you are going to set a tariff which will prevent a company making areturn on its present capital invested, but only on something less than that, then that is very unfair to the people who have invested their money in such an industry when no such theory was in force.

MR. McRUER: You mean if you fooled the people in the past you must keep on fooling them.

MR. KELLOCK: My friend cannot state my argument any better than he can state his. I just want to repeat - that no one asks for an unreasonable profit, no one asks that the tariff shall be set to make an unreasonable profit and no one objects to the setting of tariff rates which will give a reasonable return.

THE COMMISSIONER: Then you are in agreement?

MR. KELLOCK: Yes. I am not here to present any unreasonable argument on behalf of my clients. There is just this one thing: If it may be possible for an industry to make what you might call a very attractive profit or a large profit or a reasonable profit, the result inevitably is to attract other capital into that industry, and when you do that the profits fall. So that no matter what the desire of persons in an industry may be in the way of making large profits they can only make large profits out of the consumer for a limited length of time because the mere existence of the profit attracts new capital into the industry and brings the profits down.

ROBT. BRYDIS
Official Shorthand
REPORTER
TORONTO - CANADA

The only point I am directing my argument to is, if you are going to set a tariff which will prevent a company making a return on its present capital invested, but on one thing less than that, then that is very unfair to the people who have invested their money in such an industry when no such theory was in force.

MR. MOTHER: Yes, even if you fooled the people in the past you must keep on fooling them.

MR. MILLER: My friend cannot score my argument by getting them on one state ties. I just want to repeat - that no one asks for an unreasonable profit, no one asks that the tariff shall be set to make an unreasonable profit and no one objects to the setting of tariff rates which will give a reasonable return.

MR. [illegible]: Then you are in agreement?

MR. MILLER: Yes. I am not here to present any unreasonable argument on behalf of my clients. There is just this one claim: If it may be possible for an industry to make what you might call a very attractive profit or a large profit or a reasonable profit, the [illegible] industry is [illegible] [illegible] [illegible] so that no matter what the [illegible] of persons in an industry may be in the way of making [illegible] [illegible] [illegible] [illegible] [illegible]

My lord, coming now to the actual experience of the companies, I have examined a good many or all, in fact, of the financial reports which have been put before your lordship by Mr. Howson, and I submit that there is on this subject some very pertinent information as to not only profits - your lordship has not heard anything from my friend except about profits, but there is to be seen from these exhibits ~~that~~ not only the profits that have been made but the losses. I would just like your lordship - and I have had Mr. Rene turn the exhibit up for me - I would just like your lordship, if you would be good enough to refer first to exhibit 1155, which I think is before your lordship on the table under the Brief. Exhibit 1155 at page 5, and I want your lordship just to look at that.

THE COMMISSIONER: This is not paged.

MR. KELLOCK: Dealing with the Hosiery Division and it is the heading, "Total net profit". Now, all I want your lordship is to just examine that and just see the red figures that are on that page and the number of them and the frequency with which they occur in connection with the companies, and your lordship will recall - these are Mr. Howson's figures, they are what he calls, "Net profits," and they are before the payment of bank interest and bond interest and income tax. Now, if your lordship ---

THE COMMISSIONER: Would you say this is due to insufficient tariff? Is not this the particular

My lord, coming now to the actual expenditure of the companies, I have examined a good many of all, in fact, of the financial reports which have been put before your lordship by Mr. Hosmer, and I submit that there is on this subject some very pertinent information as to not only profits - your lordship has not heard anything from my friend except about profits, but there is to be seen from these exhibits not only the profits that have been made out the issues. I would just like your lordship - and I have had it, here turn the exhibits up for me - I would just like your lordship, if you would be good enough to refer first to exhibit 1169, which I think is before your lordship on the table under the judge. Exhibit 1169 at page and I want your lordship just to look at that.

LORD DUNCAN: This is not paged.

MR. ERLICHER: Dealing with the Hockey division and it is the fourth one, "Total net profits". Now, all I want your lordship is to just examine that and just see the red figures that are on that page and the number of them and the frequency with which they occur in connection with the companies, and your lordship will recall - [illegible] - Hosmer's [illegible], that [illegible] profits, [illegible] the [illegible] of [illegible] interest and [illegible] interest and [illegible]

[illegible] Could you say this is due to

line of industry which has such a very great proportion of the Canadian market as ---

MR. McRUER: 98%.

MR. KELLOCK: The Hosiery?

THE COMMISSIONER: Yes.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: There is only 2% left. No tariff can give you more than 2%. The insufficiency of the tariff cannot be blamed for these figures now. Those are the figures that were given to us;

MR. KELLOCK: Yes, that is my recollection, the same as your lordship.

THE COMMISSIONER: It is hard to conceive a tariff, which you can call a tariff at all, that would give you more than that.

MR. KELLOCK: All I am calling your lordship's attention to, as to the situation and as it has been, that is the history of the industry, and it does not show excess profit, shows all those losses.

THE COMMISSIONER: Roughly then, what could you say these losses are due to? If you have 98% of the Canadian market they are not due to any insufficiency of the market. What are they due to?

MR. KELLOCK: They are due, my lord, to excessive internal competition.

MR. McRUER: Probably bad management.

THE COMMISSIONER: Any evidence of that?

MR. KELLOCK: Well, there is the evidence, my lord,

which I am going to deal with specifically, that so far as the cheaper lines, what are called the low end or sales lines of the output of the hosiery industry, the selling prices were unprofitable and that brought about the agreement to maintain them at a certain level, that they should not go below that.

THE COMMISSIONER: I see you do not mind using the word "agreement" yourself.

MR. KELLOCK: No, I do not mind it. I was only trying to be accurate, my lord, at the time.

MR. McRUER: Not trying to be accurate now.

MR. KELLOCK: I would like if your lordship would be good enough to look at Exhibit 1017 which shows the same story for the knit goods division. It is page 7 of my Exhibit, on pages 7 and 8.

THE COMMISSIONER: What is the heading?

MR. KELLOCK: "Total net profits," the same, my lord. Now, your lordship will see there again the large number of red figures both on page 7 and the following page. There is much more in proportion on the following page than there is on page 7 but even on page 7 there is a very large amount of red figures which, of course, means losses to this industry. I am going to analyse them for your lordship, but I think that a visual inspection of the exhibit will make it plain. If your lordship looks at Exhibit 1191 which deals with carpets.

THE COMMISSIONER: What page?

interest.

which I am going to deal with specifically, that so far as the cheaper lines, what are called the low end or sales lines of the output of the factory lamps the selling prices were unprofitable and that brought about the agreement to maintain them at a certain level that they should not go below that.

THE COMMISSIONER: I see you do not mind using the word "unprofitably".

MR. KNLOCK: No, I do not mind it. I was only trying to be accurate, my lord, at the time.

MR. MORRS: Not trying to be accurate now.

MR. KNLOCK: I would like if your lordship would be good enough to look at exhibit 1017 which shows the same story for the knit goods division. It is page 7 of my exhibit, on pages 7 and 8.

THE COMMISSIONER: What is the head?

MR. KNLOCK: "Total net profits," the same, my lord. Now, your lordship will see there again the large number of red figures both on page 7 and the following page. There is much more in proportion on the following page than there is on page 7 but even on page 7 there is a very large amount of red figures which, of course, means losses to this industry. I am going to analyze them for your lordship, but I think that a visual inspection of the exhibit will be plain. If your lordship looks at exhibit 1141 which deals with carpets.

MR. KELLOCK: Page 3.

MR. McRUER: You said Exhibit 1017, pages 7 and 8, which dealt with knitted goods. Well, those pages deal with woollens.

MR. KELLOCK: You are quite right. It was Exhibit 1017 and that does deal with woollens. I called it knitted goods.

THE COMMISSIONER: Now, you are on the carpets.

MR. KELLOCK: Yes, which is Exhibit 1191 and my page 3.

THE COMMISSIONER: That is, "net profits"?

MR. KELLOCK: Yes, my lord. There is not any heading to the top of the page but it is the third page from the front.

THE COMMISSIONER: Sales, gross profits and total net profits.

MR. KELLOCK: Yes. That exhibit is not as striking as the other.

THE COMMISSIONER: They have not done so badly, have they?

MR. McRuer: The Harding Carpet Company, it was one of the four, it was a new company which just started up.

THE COMMISSIONER: They seem here all to be on a profit basis now, is not that right?

MR. KELLOCK: Yes, but this is before bond interest, bank interest and income tax and includes miscellaneous interest.

Mr. KELLOCK: Page 3.

MR. MOSHER: You said exhibit 107, pages 7 and 8, [illegible] deal with woollens.

MR. KELLOCK: You are quite right. It was exhibit 107 and that does deal with woollens. I called it knitted goods.

THE COMMISSIONER: Now, you are on the corporate.

MR. KELLOCK: Yes, which is exhibit 1191 and my page 1.

THE COMMISSIONER: That is, your profits?

MR. KELLOCK: Yes, my lord. There is not any heading to the top of the page but it is the third page from the front.

THE COMMISSIONER: Sales, gross profits and total net profits.

MR. KELLOCK: Yes. That article is not as satisfactory as the other.

THE COMMISSIONER: They were not done so badly, have they?

MR. [illegible]: In the textile industry [illegible], if you take one of the four, it was a new company which just started up.

THE COMMISSIONER: They seem here all to be on a profit basis, is not that right?

MR. [illegible]: Yes, but this is before bond interest. Bond interest are taken [illegible] interest.

MR. McRUER: They are all paying dividends, are not they?

THE COMMISSIONER: Are you still saying that a man must get enough money not only to pay himself a profit but to pay his lenders' profits too?

MR. KELLOCK: To pay what he owes his lender for borrowed capital. He must make both.

THE COMMISSIONER: I thought he had disposed of that. That is to say, if two men have $200,000, and one of the men has his own and one has borrowed it from the bank and he invests it, the one who borrows it from the bank is entitled to make twice as much as the other.

MR. McRUER: No, not twice as much. I say the man who borrows from the bank gets nothing until he pays the interest on his borrowed capital.

THE COMMISSIONER: Why should he? Do you mean to say the consumer in that case must pay enough not only to pay something to the man but also interest on the borrowed money. While in the case of the first man who has not borrowed the money, who brought in his own money, he is only entitled to make a lesser sum in net profits?

MR. KELLOCK: Yes. I submit that the man who borrows from the bank or anyone else only borrows with the idea of making profit.

THE COMMISSIONER: Yes, but think of the consumer. You are talking of what is a fair profit.

ROBT. BRYDIS
Phonetic Stenographic
Reporters
TORONTO - CANADA

MR. MORDEN: They are all paying dividends, are not they?

THE COMMISSIONER: Are you still saying that a man must get enough money not only to pay himself a profit but to pay his lenders' profits too?

MR. MORDEN: To pay what he owes his lender for borrowed capital. He must make both.

THE COMMISSIONER: I thought he had disposed of that. That is to say, if two men have $500,000, and one of the men has his own and one has borrowed it from the bank and he invests it, the one who borrowed it from the bank is entitled to make twice as much as the lender.

MR. MORDEN: No, not twice as much. I say the man who borrows from the bank gets nothing until he pays the interest on his borrowed capital.

THE COMMISSIONER: Why should he? He has made to pay the consumer in that case he not only to pay something to the man but also interest on the borrowed money. While in the case of the first man who has not borrowed the money, who brought in his own money, he is only entitled to make a lender one in net profits?

MR. MORDEN: Yes. I submit that the man who borrows from the bank or anywhere else only borrows when he thinks it will pay profit.

THE COMMISSIONER: Yes, but think of the consumer

Suppose you are in the hands of a usurer, have to pay him 10% for the money you borrow, must the consumer put up with that?

MR. McRUER: I don't think so.

THE COMMISSIONER: You will have to tell that to some other inquiry, it won't do here.

MR. KELLOCK: I want to present the views of my clients.

THE COMMISSIONER: Are you sure you are presenting the views of your clients, that net profit must include not only a profit to you but pay off somebody else?

MR. KELLOCK: Net profits to me is what I get after I pay all the expenses of my business and bond expense and ---

THE COMMISSIONER: All right, no use arguing.

MR. McRUER: I understand that argument has been rejected by the Tariff Board several times already.

MR. KELLOCK: I want your lordship, if you will be good enough to look at Exhibit 917, which deals with the Real Silk Division, page 5, Your Lordship sees the red figures there, particularly in the last period, 1931 to 1935. I am going to analyse these figures for your lordship. Then if your lordship will look at Exhibit 998, page 5, deals with the Cotton Division. Your lordship sees the red figures which show the losses sustained in that division.

THE COMMISSIONER: There is only one there, Cornwall

Suppose you are in the hands of a usurer, have to pay him 10% for the money you borrow, must the consumer put up with that?

MR. MORRIS: I don't think so.

THE COMMISSIONER: You will have to tell that to some other inquiry, it won't do here.

MR. MORRIS: I want to present the views of my clients.

THE COMMISSIONER: Are you sure you are presenting the views of your clients, that net profit must include not only a profit to you but pay off somebody else?

MR. MORRIS: Not profits to me in that I get after I pay all the expenses of my business and bond & pence and ---

THE COMMISSIONER: All right, no use arguing.

MR. MORRIS: I understand that argument has been validated by the Royal Bank Revenue Claims already.

MR. MORRIS: I want your lordship, if you will be good enough to look at Exhibit 317, which deals with the Rosi Silk Division, page 6. Your lordship sees the red figures there, particularly in the last period last to 1928. I am going to analyze these figures for your lordship. Then if your lordship will look at exhibit 320, page 5, deals with the Cotton Division your lordship sees the red figures which show the losses sustained in that division.

MR. MORRIS: There is only one year, [illegible]

and York Cotton Mills.

MR. KELLOCK: That cannot be the right page. Headed "Net profit on sales."

THE COMMISSIONER: There is only one that was in the red last year, that is Cornwall and York Cottons.

MR. KELLOCK: Yes. If your lordship looks for period 1930 to 1935.

MR. McRUER: You have to remember in regard to that company the evidence is they wrote down their inventory in order to consume some of the profits.

MR. KELLOCK: I want to analyse the story in these exhibits just for a moment or two. These exhibits show the sales of these companies, and I want to refer particularly to the period 1931 to 1935, and those exhibits show that on a sale of $83,192,042 worth of textile goods the textile trade lost $5,275,037.

THE COMMISSIONER: I want to make sure I understand you. What is the $83,000,000? Is that sales?

MR. KELLOCK: That is the sales of the companies making the losses, in the period 1930 to 1935.

THE COMMISSIONER: That is all branches of the industry?

MR. KELLOCK: Yes, my lord, according to these exhibits.

THE COMMISSIONER: Made losses of what?

MR. KELLOCK: $5,275,037.

THE COMMISSIONER: On volume of sales of $83,000,000?

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CHARTERED ACCOUNTANTS
TORONTO - CANADA

and York Cotton Mills.

MR. WALLOCK: That can't be the right page, headed "Net profit on sales."

THE COURT REPORTER: There is only one that was in and last year, that is Cornwall and York cottons.

MR. WALLOCK: Yes. It goes backwards based on period 1930 to 1932.

MR. MOSKOVITCH: You have to remember in regard to that company the evidence is they write down their inventory in order to reduce some of the profits.

MR. WALLOCK: I want to analyze the story in the exhibits just for a moment or two. These exhibits show the sales of these companies, and I want to refer particularly to the Lorne Mill in Lyon, and these exhibits show that on a sale of $96,142,000 worth of textile goods the textile trade lost $8,276,000.

THE COMMISSIONER: I want to make sure I understand you. What is the $96,000,000? Is that sales?

MR. WALLOCK: That is the sales of the companies making the losses, in the period 1930 to 1932.

THE COURT REPORTER: That is all branches of the industry.

MR. WALLOCK: Yes, my lord, according to the exhibit.

THE COMMISSIONER: Made losses of what?

MR. WALLOCK: $8,276,000.

The counsel [illegible] on behalf of [illegible]

MR. KELLOCK: Yes. Now the number of companies reported on in the Exhibits are 137, and in the year 1931 39 of those companies showed losses.

MR. McRUER: How many companies reported on?

MR. KELLOCK: 137. That is an average figure. Some years one or two more companies than the other year. In 1932 there were 47 companies that showed losses. In 1933 there were 33 companies that showed losses. In 1934 there were 37 companies having losses, and in 1935 there were 30 companies with losses. Now, those companies producing that amount of goods and selling them at a loss of over $5,000,000, gave employment and provided the payroll for their workmen during all that time.

Now, my lord, taking the situation by years, giving your lordship the story for the full period, in 1931 the companies which made losses sold $[illegible],283,830 worth of goods and they made a loss on the sale of those goods of $2,376,784.

MR. McRUER: That is the companies that showed losses on the statements.

MR. KELLOCK: In that year, 1931. In 1932 the companies which made losses produced $21,352,000 worth of goods, and they sold them at a loss of $1,597,468. In 1933 the companies experiencing losses produced $10,942,318 worth of goods and they sold them at a loss of $546,834. In 1934 the companies making losses produced $11,914,771 worth

MR. CHALCOM: Yes. The loss of companies

[illegible] on in the exhibits are 127, and in the year

1931 38 of those companies showed losses.

MR. MORTON: How many companies reported any

MR. CHALCOM: 127. That is an average figure.

Some years one or two more companies than the other

year. In [illegible] 47 companies had [illegible]

losses. In 1932 there were 53 companies that showed

losses. In 1933 there were 47 companies having

losses, and in 1934 there were 32 companies with losses

so, those companies showing that amount of goods

and selling them at a loss of over $5,000,000.

Have employment and provided the payroll for their

workmen during all that time.

Now, my lord, taking the situation by years,

giving your lordship the story for the full period,

in 1931 the companies which made losses sold $4,227,[illegible]

worth of goods and they made a loss on the sale of

those goods of $1,[illegible],724.

MR. MORTON: That is the companies that showed

losses on the endorsements.

MR. CHALCOM: In that year, 1931. In 1932 the

companies which made losses produced $4,[illegible],000,000

worth of goods, and they sold them at a loss of

$1,[illegible],000. In 1933 the companies producing

[illegible] $[illegible] [illegible]

[illegible] $[illegible] [illegible]

of goods which they sold at a loss of $379,248. In 1935 the companies making losses produced $10,693,000 worth of goods and theymade losses of $374,700, and those figures make up the total sales of $83,192,000 that I gave your lordship and total losses of $5,275,000.

Now, my lord, taking the situation by the divisions in which these companies are, the Hosiery Division in the five-year period sold $7,678,571 worth of goods- these are the companies making losses - and they sold these goods at a loss of $325,759.

MR. McRUER: Is that the year?

MR. KELLOCK: That is five-year period. In the Woollen Division, the Companies making losses in the period produced $25,948,923 worth of goods.

THE COMMISSIONER: They produced that?

MR. KELLOCK: They produced and sold, and they experienced a loss of $1,744,304.

In the Carpet Division, the companies making losses in that Division sold goods to the value of $1,369,675 at a loss of $46,823.

In the Knit Goods Division, the Companies making losses sold goods to the value of $28,385,738 at a loss of $1,621,319.

In the Real Silk Division, the Companies there making losses sold goods to the value of $3,504,569 at aloss of $295,491.

ROBT. BRYDIE
CHARTERED STENOGRAPHIC REPORTER
TORONTO CANADA

at gross sales that only a loss of $277,000. In this the auditors secured losses amounting $17,000,000 worth of goods and therefore losses of $274,700, and these figures make up the total sales of $62,182,000 that I gave your lordship and total losses of $5,275,000.

Now, my lord, taking the situation by the divisions in which these companies are, the Honiary division in the five-year period sold $7,675,371 worth of goods these are the companies making losses - and they sold these goods at a loss of $2,000,752.

MR. FERGUSON: In what the years?

MR. KELLOCK: That is five-year period. In the Woollen Division, the Companies making losses in the period produced $18,246,055 worth of goods.

THE COMMISSIONER: They produced that?

MR. KELLOCK: They produced and sold, and they experienced a loss of $1,716,000.

In the Carpet Division, the companies making losses in that division sold goods to the value of $1,324,875 at a loss of $66,000.

In the Knit Goods Division, the Companies making losses sold goods to the value of $28,325,755 at a loss of $1,221,219.

In the Wool Silk Division, the Companies that making losses sold goods to the value of $5,004,542 at a loss of $277,771.

THE COMMISSIONER: That was real silk?

MR. KELLOCK: Yes, my lord. And in the Cotton Division, the Companies making losses sold goods to th value of $16,304,563 at a loss to themselves of $1,241,340, and those totals of sales and losses equals the totals which I gave your lordship to begin with.

THE COMMISSIONER: Very well, we will adjourn now.

--

-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

THE COMMISSIONER: That was real milk?

MR. MARTIN: Yes, my lord. And in the bottom division, the Companies making losses sold goods to the value of $1,304,368 at a loss to themselves of $1,841,840, and those totals of sales and losses equals the totals which I have your lordship to begin with.

THE COMMISSIONER: Very well, we will adjourn now.

-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

-- On resuming at 2.30 p.m.

MR. KELLOCK: My lord, I called your lordship's attention to the statement of losses this morning. That had previously been called to your lordship's attention, and your lordship will recall one of the things in the Order in Council is the extent to which the industry has observed the responsibility of carrying on in times of difficulty, and I submit those figures do show that in a very striking way, and they also show, my lord, if the consumer can benefit by getting goods below the cost of production, then the consumer also got a very substantial benefit in those years.

My lord, I am afraid I misapprehended what your lordship put to me this morning with regard to the return on money which an industrialist might borrow from a bank. If your lordship had in mind that I was arguing that if I borrow money from a bank for the purpose of assisting me in carrying on my business, and I pay, we will say, 7% to the bank, if your lordship understood me to be arguing that I would expect a return of 6% or 5% or 7% on that money so borrowed over and above what I have to pay to the bank then I misunderstood your lordship because I do not argue any such proposition as that at all. My submission to your lordship is that if a person in a manufacturing industry borrows money from a bank he does so for the purpose of increasing production and selling more goods, and he would only do that, he would only borrow and

-- On resuming at 2.00 p.m.

MR. KELLOCK: My Lord, I called your Lordship's attention to the statement of Lessen this morning. That had previously been called to your Lordship's attention, and your Lordship will recall the no[illegible] things in the Lower in Council in the extent to which the industry has observed the responsibility of carrying on in times of difficulty, and I submit these figures do show that in a very striking way, and they also show, my Lord, if the consumer can benefit by getting goods below the cost of production, then the consumer also got a very substantial benefit in those years.

My Lord, I am afraid I misunderstanded what your Lordship p t to me this morning with regard to the return on money which an industrialist might borrow from a bank. If your Lordship had in mind that I was arguing that if I borrow money from a bank for the purpose of enabling me in carrying on my [illegible] and I pay, we will say, 7% to the bank, if your Lordship understood me to be arguing that I would expect a return of 6% or 5% or 7% on that money so borrowed over and above what I have to pay to the bank then I misunderstood your Lordship because I do not argue any such proposition as that at all. My submission to your Lordship is that if a person in a manufacturing industry borrows money from a bank he does so for the purpose of [illegible] [illegible] and is [illegible] [illegible]

incur the risk of the larger production if he thought he was going to make more profits on his own investment than he had previously made, and therefore, what he would make on the borrowed monies over and above--

THE COMMISSIONER: What he would make --

MR. KELLOCK: What he would make on the borrowed monies, by using the borrowed monies, over and above what he would have made had he not borrowed those monies would be -- either you could say that he made that on the borrowed monies or that he had increased the return on his own investment by reason of the assistance of that borrowed money. That is as far as I go and no further, my lord, and if I misunderstood your lordship, as I think I did, I am sorry.

THE COMMISSIONER: No, I may have misunderstood you. In showing me, for instance, the plight of some companies you say their net profits were only a small figure, or did not exist at all, that they made no profits, and in some cases the question arose, well, do you say they must make allowance for what they had to pay to those they borrowed from, to banks, and on bonds and so on. That is, only after they have paid off their lenders that you can then say that they have made profits.

MR. KELLOCK: Yes, if they have anything left.

THE COMMISSIONER: You say here they are in the red, and that means -- well, the tariff is not too high, anyhow.

MR. KELLOCK: It is not too high.

THE COMMISSIONER: And maybe is not high enough.

insure the risk of the larger proportion if he thought he was going to make more profits on his own investment that is had personally been, but therefore, that he would make on the borrowed money over and above--

THE COMMISSIONER: What he would make --

MR. WILSON: What he would make on the borrowed monies, by using the borrowed monies, over and above what he would have made had he not borrowed those monies would be -- either you could say that he made that on the borrowed monies or that he had increased the return on his own investment by reason of the assistance of that borrowed money. That is as far as I go and no further, my lord, and if I misunderstood your lordship, as I think I did, I am sorry.

THE COMMISSIONER: No, I may have misunderstood you. In showing me, for instance, the profit of some companies you say that not profits were only a small figure, or did not exist at all, that they made no profits, and in some cases the question arose, well, do you say they must make allowance for what they had to pay to those they borrowed from, to [illegible] they have paid off their labors that you can then say that they have made profits.

MR. WILSON: Yes, if they have [illegible].

THE COMMISSIONER: You say, here they are in the [illegible] -- well, the fact is that one [illegible].

MR. WILSON: It is not the [illegible].

MR. KELLOCK: Maybe.

THE COMMISSIONER: You get back then to what Mr. McRuer was trying to arrive at, and that is this question of reasonable profit. His theory is that the tariff should be devised so, if it is a protective tariff, that it allows for a reasonable profit to be acquired under good management.

MR. KELLOCK: I agree with that.

THE COMMISSIONER: Now then, I gave you the case several times and again this morning; you take two persons who invest in an industry and one invests $1000000 of his own and the other invests $100,000 that he has borrowed.

MR. KELLOCK: With nothing of his own?

THE COMMISSIONER: Yes, to make the example clear you have got to have it that way. Afterwards you can discuss, if you like, proportions. He has to pay 5% interest on the money he has borrowed. Then, suppose you could ascertain definitely what a reasonable profit is and you fix it at 10%. I am not saying it is or is not that. The figure has no value. Well then, you come along and you say "no, no, 10% is not enough in my case because I need 15%".

MR. KELLOCK: No, I would not, my lord.

THE COMMISSIONER: You would not.

MR. KELLOCK: No, I would not say I was entitled to any more whether I borrowed the money or not. All I say is if your lordship is to find out what I have got as a result of the investment of my money and the employment of additional capital which I might

Mr. KILLOCK: Maybe.

The COMMISSIONER: You get back then to what you, rather was trying to arrive at, and that is this question of reasonable profit. His theory is that the tariff should be devised so, if it is a protective tariff, that it allows for a reasonable profit to be realized under reasonable conditions.

Mr. KILLOCK: I agree with that.

The COMMISSIONER: Then, I gave you the case several times and again this morning, you take two persons who invest in an industry and one invests $100,000 of his own and the other invests $100,000 that he has borrowed.

Mr. [illegible]

The COMMISSIONER: Yes, to make the example clear you have got to have it that way. Alternative you can discuss, if you like, propositions. He has to pay 5% interest on the money he has borrowed. Then, suppose you could accurately define what a reasonable profit is and you fix it at 10%. I am not saying it is or is not that. The figure has no value. Well then, you come along and you say "no, 10% is not enough in my case because I need 15%".

Mr. KILLOCK: No, I would not, my Lord.

[illegible]

Mr. KILLOCK: No, I would not say I was entitled to ask me whether I borrowed the money or not. All I say is if your Lordship is to find out what I have left as a result of the [illegible] by doing [illegible] the [illegible] and [illegible]

borrow then you must --

THE COMMISSIONER Take the $100,000 and split it in two. Suppose $50,000 is your own money and $50,000 is borrowed money.

MR. KELLOCK: I get 10% on the one hundred. My return is only 5% on my own. Let us see whether my arithmetic is right --

THE COMMISSIONER: It is 7½% in that case. You borrowed fifty thousand and you put in fifty thousand of your own. Now then --

MR. KELLOCK: That would be 7½ to me.

THE COMMISSIONER: You say that is a reasonable profit?

MR. KELLOCK: Well, I don't defend --

THE COMMISSIONER: Assuming that 10% would be the standard.

MR. KELLOCK: Yes, assuming that 10 would be the standard. All I am saying, and I begin and end there, is that to see whether or not I have made a reasonable profit or an unreasonable profit your lordship has to get to the 7½% figure because that is all I got.

THE COMMISSIONER: In that case, once you fix the 7½% figure, but if you borrow your money at 12%--

MR. KELLOCK: I could not expect to be in any better position.

THE COMMISSIONER: Then you would be 2% in the red that year and you could not complain. You should not be in business at all.

MR. KELLOCK: I get 10% on the one hundred. My remuneration is only 5% on my own. Let me see whether my arithmetic is right —

THE COMMISSIONER: It is 75% in my mind. The commission figure because and you get 10% figure commission at that rate. Not that —

MR. KELLOCK: That would be 7½ to me.

THE COMMISSIONER: You say that is a reasonable profit?

MR. KELLOCK: Well, I don't defend —

THE COMMISSIONER: Assuming that 10% would be a standard.

MR. KELLOCK: Yes, assuming that 10 would be the standard. All I am saying, and I begin and end there, is that to see whether or not I have made a reasonable profit or an unreasonable profit your Lordship has to get to the 7½% figure because that is all I get.

THE COMMISSIONER: In that case, once you fix the 7½ figure, but if you borrow your money at 10—

MR. KELLOCK: I could not expect to be in any further position.

THE COMMISSIONER: That you would be if you had your full profit only but analyzing, the second one is the problem at all.

MR. KELLOCK: I would not expect to be in any better position.

THE COMMISSIONER: There is nobody could go into this business or any other business and say "I am going to make out of this a good profit for myself and besides that pay off the interest on my borrowings".

MR. KELLOCK: All I ask is that the spot light should be turned on what I get in the last analysis.

THE COMMISSIONER: In that case the net revenue is a very important factor. Then, the question is "who are you and what are you putting in"? It arises in all sorts of ways. Take, for instance, we used to have in the West a great many small mortgage companies loaning money on farm mortgages. Well, the ordinary large company was loaning at 7%. Therefore that was the rate they all had to take. The small company would borrow its money from the bank and pay the bank say 6%, and then loan at 7% or 7½% and make its profit out of that, pay its expenses out of that. Would you say that small company should have asked for 12 or 13% because it had to pay the bank 6%, or even 8 or 9?

MR. KELLOCK: No, what I say is what the small company got was not seven per cent. It was 7% less the interest it had to pay on this borrowed money. I don't say it should earn any more than the other company.

THE COMMISSIONER: I say once you have fixed 10% as a reasonable profit --

MR. KELLOCK: That applies to everybody.

MR. KILLOUGH: I would not expect to be in any better position.

THE COMMISSIONER: There is nobody could go into this business or any other business and say "I am going to make out of this a good profit for myself and besides that pay off the interest on my borrowings".

Mr. [illegible]: All I ask is that the spot light should be turned on what I get in the last analysis.

THE COMMISSIONER: In that case the net revenue is a very important factor. Then, the question is "Who are you and what are you putting in?" It arises in all sorts of ways. Take, for instance as good to have in the East a great many small mortgage companies loaning money on farm mortgages. Well, the ordinary large company was loaning at 7%. Therefore that was the rate they all had to take. The small company could borrow its money from the bank and pay the bank say 6%, and then loan at 7% or 7½% and make its profit out of that, pay its expenses out of that. [illegible] small company should have asked for 12 or 12½% because it had to pay the bank 6%, or even 8 or 9?

Mr. [illegible]: No, what I say is that the small company got was not seven per cent. It was 7% less the interest it had to pay on this borrowed money. I don't say it should earn any more than the other company.

THE COMMISSIONER: I see you [illegible] — [illegible]

Mr. [illegible]: That applies to everybody.

THE COMMISSIONER: -- you cannot complain if you come out with a loss at the end of the year.

MR. KELLOCK: No.

THE COMMISSIONER: You cannot come and tell me "well, here is my loss; put up the tariff so I can make more".

MR. KELLOCK: No, I did not say that. I just say, looking at existing conditions --

THE COMMISSIONER: Alright, as long as we understand each other.

MR. KELLOCK: All I want your lordship to do is just to look at whatever the standard may be, whatever standard your lordship may believe is right, if your lordship decides on such a standard; all I ask your lordship to do is to say what the shareholders--

THE COMMISSIONER: But once you come and tell me you have fallen below the standard and when I investigate your returns that you show me it is because you had to pay interest on borrowed money to somebody then I cannot agree with you. As I say you are falsifying the situation unless you simply take it to show me you have done that and base no claim on it.

MR. KELLOCK: Well, one of the things, my lord, that I find in the Order in Council, as I read it, is that one of the things that is to be inquired into is the matter of profits.

THE COMMISSIONER: Precisely.

MR. KELLOCK: From the standpoint of the industry;

THE COMMISSIONER: Are we still talking in
you have not said a word at the end of the year.

MR. R O'CONN: No.

THE COMMISSIONER: Let cannot come and tell me
well, here is my idea; put up the tariff so I can
make money.

MR. [illegible]: No, I did not say that. I just say
looking at existing conditions --

[illegible] stand each other.

MR. [illegible]: All I want your Lordship to do is
just to look at whatever the statement may be, what-
ever statement your Lordship may believe is right, if
your Lordship decides on such a statement; all I ask
your Lordship to do is to say what the statement is--

THE COMMISSIONER: But once you come and tell
me you have fallen below the standard and then I
investigate to your satisfaction that you also no it is
[illegible] (Mr. [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
take it to show me you have done that and been no
claim on it.

MR. [illegible]: Well, one of the things, my Lord,
that I find in the Order in Council, as I read it, is
that one of the things that is to be inquired into
is the [illegible] of [illegible].

THE COMMISSIONER: Exclusive.

MR. [illegible]: From the standpoint of the [illegible]

all I am going to do is to present to your lordship the profits from the standpoint of the shareholders, that they have made.

THE COMMISSIONER: Without analyzing them further?

MR. KELLOCK: I am going to analyze them down to the point which I think is the last step, what the shareholder got.

THE COMMISSIONER: It may or may not be; however, go on.

MR. KELLOCK: My lord, in dealing with the exhibits prepared by Mr. Howson, and of course your lordship appreciates the figures I gave your lordship this morning as to losses are just taking Mr. Howson's own figures right from his exhibits, in dealing with the exhibits prepared by Mr. Howson they show revenue --

THE COMMISSIONER: They show what?

MR. KELLOCK: Revenue against capital employed, and my friend uses that set-up, for want of a better word, throughout. Now, the exhibits do not show and my friend's brief does not show what the capital employed is. Capital employed is used -- we have found out by cross-examination that it includes capital obtained from any source whether it is through the bank or any other lender, bond holder, and as well as the shareholders, the investment contributed by the shareholders. That is what capital employed includes for one thing. Now, the revenue figures --

all I am going to do is to present to you Exhibits the profits from the shareholdings of the shareholders, that they have made.

[illegible]

to the point which I think is the last step, when the shareholder gets.

[illegible]: It may or may not be; however, [illegible]

Mr. KILLOCH: My Lord, in dealing with the evidence prepared by Mr. Howson, and of course your Lordship approved to the figures I gave your Lordship, this morning as to losses are just taking Mr. Howson's own figures right from his exhibits, in dealing with the exhibits prepared by him. Because then when [illegible] —

[illegible]

Mr. KILLOCH: Because counsel said I [illegible] word, thereupon. Now, the exhibits do not show and my friend's brief does not show what the capital employed is. Capital employed is used -- we have found out by cross-examination that it includes capital obtained from any source whatever it is it or the bank or any other lender, loan holder, and as well as the shareholders, the investment contributed by the shareholders. That is what capital employed includes for one thing. Now, the [illegible] —

THE COMMISSIONER: That is what capital employed includes according to Mr. Howson's way of dealing with it.

MR. KELLOCK: Yes, and my friend's brief. In the figure of revenue, which ~~my~~ the exhibits call net revenue, and which my friend calls net revenue or revenue or return -- those are at least three of the words my friend uses -- that figure of revenue is revenue for the entire year at the point -- it stops at the point before considering the expense of any part of the period that the company has incurred. That is, it stops before you take out bank interest or bond interest and income tax, and I am going to discuss that later on.

THE COMMISSIONER: Are you sure?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: When are those things accounted for, in the following year?

MR. KELLOCK: No, the figure of net profit which my friend uses and which Mr. Howson calls in his exhibits "net profit"--

THE COMMISSIONER: I thought you were talking of revenue now.

MR. KELLOCK: Yes; well, revenue is the next profit. The exhibits call it net profit, and it is before these items. Now, there was an exhibit which Mr. Howson prepared at my request showing it after these things had been deducted, and in the exhibits your lordship will find in looking at the exhibits that the figure of

THE CHAIRMAN: That is what capital employed implies according to Mr. Dawson's way of dealing with it.

MR. [illegible]: Yes, and my friend's point. In the figure of revenue, which my the exhibits call net revenue, and which my friend calls net revenue or revenue or return -- those are at least three of the words my friend uses -- that figure of revenue is revenue for the entire year at the point -- it [illegible] of the point before [illegible]. The [illegible] of any part of the period that the company has been [illegible]. That is, it stops before you take out bond interest or bond interest and income tax, and I am going to discuss that later on.

THE CHAIRMAN: Are you sure?

MR. [illegible]: Yes, my lord.

THE CHAIRMAN: Then are those figures accounts for, in the following year?

MR. [illegible]: No, the figures of net profit which my friend uses and which Mr. Dawson calls in his exhibit "net profit"--

THE CHAIRMAN: I thought you were talking of revenue now.

MR. [illegible]: Yes; well, revenue is the mark [illegible]. The exhibits call it net profit, and it is before the items. Now, there was an exhibit which Mr. Dawson [illegible] at my request showing it after these items [illegible] deducted, and in the exhibit be your lordship will find in looking at the exhibit that the figure

net profit in many cases will be below the page -- will be in the centre of the page and after that the exhibit goes on to say, "applied as follows, interest on loans, interest on bonds, income tax", and so on.

THE COMMISSIONER: Dividends.

MR. KELLOCK: Dividends and so on.

THE COMMISSIONER: Isn't that the proper way to apply it? Anyhow, that is the way you are dealing with it.

MR. KELLOCK: That is the way. That figure of revenue or net profit is the entire figure of revenue for the full year but the figure of capital employed is not. It is the figure in existence in the case of every one of these individual companies on one day in the year only, and I think that day -- I will be corrected if I am wrong -- is the 31st of December in each case. No, it is the closing day of the company's year, but it is the figure in existence on one day in the year.

THE COMMISSIONER: As capital employed?

MR. KELLOCK: Yes. Now, accordingly my submission is that even using that basis, if your lordship thinks there is any value in it for comparative purposes or anything else, it does not give you the proper result taking the figure of revenue for the full year, and the figure of capital employed for a single day in the year, and if you wanted to use that system you should average the capital employed throughout the year. I say that for this reason that it has been mentioned

net profit in many cases will be below the mark -- will be in the course of the year and after that the exhibit goes on to say, "applied as follows, interest on loans, interest on bonds, income tax", and so on.

THE COMMISSIONER: Dividends.

MR. BRIGHT: Dividends and so on.

THE COMMISSIONER: Isn't that the proper way to apply it? Anyhow, that is the way you are dealing with it.

MR. BRIGHT: That is the way. That figure of revenue or net profit is the gross figure of revenue for the full year but the figure of capital employed is not. It is the figure in existence in the year of every one of those individual companies on one day in the year only, and I think that day -- I will be corrected if I am wrong -- is the date of December in each case. No, it is the closing day of the company year, but it is the figure in existence on one day in the year.

THE COMMISSIONER: Is capital employed?

MR. BRIGHT: Yes. Now, [illegible] there is any value in it for comparative purposes or anything else, it does not give you the proper result taking the figure of revenue for the full year, and the figure of capital employed for a single day in the year, and if you wanted to see that system you should average the capital employed throughout the year.

I say that for this reason that it has been mentioned

in evidence -- take a company, any of these companies that have large amounts of money invested in inventory. They do not have that money constantly invested in that inventory throughout the year. There are seasons in the year where there is a big investment in the inventory, where the inventory is high. Deliveries are made, the inventory is realized and that money comes in. The company does not leave that money idle in its hands because they can put it out on call loan, or put it in a bond, bearer bond, or something of that kind until it needs it for the purpose of inventory again. The company is doing only the proper thing. It is keeping its capital at work and bringing in revenue. So that if you take the figure of capital employed and it happens to be at a time when the company has had a much larger part of its capital tied up in inventory it does substantially affect your capital/on the day you happen to pick for your figure on capital employed and then to set your revenue against that figure. The revenue has not been earned only by the employment of that figure of capital but it has been earned as well on the capital which was invested for a large part of the year in inventory and which has been realized.

THE COMMISSIONER: You mean, do you, that the amount put aside and called capital employed on the last day of the year is too small?

MR. KELLOCK: Too small.

THE COMMISSIONER: Is that uniform in every case?

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MR. KELLOCK: I cannot say that.

THE COMMISSIONER: You mean it might be too small.

MR. KELLOCK: It might be.

THE COMMISSIONER: Might it have been too large?

MR. KELLOCK: It might have been.

THE COMMISSIONER: Is there any more practical way of getting at the amount of capital?

MR. KELLOCK: My submission is the only proper way is to average it throughout the year.

THE COMMISSIONER: Have you filed anything here based on that?

MR. KELLOCK: No, I am attacking it from another standpoint. I do not agree, with all respect, that that is the proper way to get at anything that is of value, but it has been used.

THE COMMISSIONER: What is not the proper way?

MR. KELLOCK: That is, to take the capital employed.

THE COMMISSIONER: You mean even on an average basis?

MR. KELLOCK: Even on an average basis; I say that does not give you a result of value, but it has been used, and I just want to point out to your lordship the infirmity in the very method which has been employed.

THE COMMISSIONER: Do I understand you to say that the relation between capital employed and return is not the proper measure for getting at the prosperity or adversity of the company?

MR. KELLOCK: Yes.

THE COMMISSIONER: How would you go about

MR. [illegible]: I [illegible] that.

THE COUNCILLOR: You mean it might be too small.

MR. MILLOUX: It might be.

THE COUNCILLOR: Might it have been too large?

MR. MILLOUX: It might have been.

THE COUNCILLOR: Is there any more practical way of getting at the amount of capital?

MR. MILLOUX: My submission is the only proper way is to average it throughout the year.

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MR. MILLOUX: Even on an average basis; I say it does not give you a result of value, but it has been used, and I just want to point out to your Lordship the infirmity in the very method which has been adopted.

[illegible] I understand you to say that the relation between capital employed and return in any this year, because [illegible] getting at the [illegible] as regards [illegible] of the [illegible]?

MR. MILLOUX: Yes.

[illegible]

ascertaining whether or not a company is on a profitable basis or not, and to what extent it is profitable?

MR. KELLOCK: My submission is this, my lord, that the proper way is to take the capital that belongs to the shareholders and find out what is the return on that.

THE COMMISSIONER: What do you mean by capital belonging to the shareholders.

MR. KELLOCK: Capital that has been invested by the shareholder from the beginning and any accumulated profits which he has left in the industry.

MR. McKEON: That is $500,000 in one case.

THE COMMISSIONER: That is just what I thought you objected to doing in one case, at least.

MR. KELLOCK: No, I don't think so.

MR. McKEON: Or nothing in the Penman case.

MR. KELLOCK: I don't think so, my lord; I am quite satisfied to be judged in that way. My submission is when the Order in Council speaks of profits it is the profit of the industry and the profit of the industry is the profit of the shareholders and the profit of the shareholder is the return on his capital in the business.

THE COMMISSIONER: I don't know how far you mean to go with that. Shares have a fluctuating value.

MR. KELLOCK: I do not mean the market value at all.

THE COMMISSIONER: Well, the capital he puts in is what he pays for his shares. What do you mean then by the shareholder's investment? If I buy 100 shares in the Dominion Textile Company to-day, if

ROBT. BAYNE
CERTIFIED STENOGRAPHER
TORONTO, CANADA

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that.

THE COMMISSIONER: What do you mean by capital
belonging to the shareholders.

MR. [illegible] Capital that has been invested by
the shareholder from the beginning and any accumulated
profits which he has left in the industry.

MR. MOTTON: That is $800,000 in one case.

THE COMMISSIONER: That is just what I thought you
objected to doing in one case, at least.

MR. KELLOGG: No, I don't think so.

MR. MOTTON: Or nothing in the Lennon case.

MR. KELLOGG: I don't think so, my lord; I am
quite satisfied to be judged in that way. My submission
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THE COMMISSIONER: I don't know how far you mean
to go with that. There has a fluctuating value.

MR. [illegible]: I do not know the market value of
[illegible]

THE COMMISSIONER: Well, the capital he puts in
is what he pays for his shares. What do you mean
[illegible] by the shareholder's investment. [illegible]
[illegible] in the Dominion Textile Company, [illegible]

I was fortunate enough to be able to, that is my investment there. If they go up on the market next year --

MR. KELLOCK: That is different.

THE COMMISSIONER: I must always get a return on that investment, no matter what happens.

MR. KELLOCK: No.

THE COMMISSIONER: Well, what is it?

MR. KELLOCK: That is your lordship's investment in the shares, but that is an entirely different thing.

THE COMMISSIONER: That is, I am a shareholder then.

MR. KELLOCK: Your lordship only steps into the shoes of your lordship's predecessor.

THE COMMISSIONER: My predecessor might have died 50 years ago. I thought you were trying to get away from that and allow the dead past to bury its dead.

MR. KELLOCK: What I am saying, and I submit it is sound, is that the thing that is of value is that profit that the shareholder has on his investment, and when I say shareholders I mean the shareholders as a group. I mean the body corporate. I mean the company. In other words, the profit which is available for distribution among the shareholders whether it be distributed or not.

THE COMMISSIONER: How are you going to fix that capital? You won't take the amount which the shareholder pays for his shares and add the aggregate together. You say that is not right.

MR. KELLOCK: The value of the assets behind the shares.

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TORONTO CANADA

5 ... fortune enough to be able to, that is my investment issue. If they go up on the market next year —

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Mr. [illegible]:

THE COMMISSIONER: Well, what is it?

Mr. KELLOCK: That is your Lordship's investment in the shares, but that is an entirely different thing.

15 THE COMMISSIONER: That is, I am a shareholder to the shares of your Lordship's predecessor.

THE COMMISSIONER: My predecessor might have died [illegible]. I thought you were trying to get away from that and allow the dead past to bury its dead.

Mr. KELLOCK: That I am willing, and I submit it is sound, is that the thing that is of value is that profit that the shareholder has on his investment, or when I say shareholders I mean the shareholders as a group. I mean the body corporate. I mean the company. In other words, the profit which is available for distribution among the shareholders whether it be distributed or not.

25 THE COMMISSIONER: Now are you going to fix that capital? You won't take the amount which the shareholder paid for his shares and add the appropriate [illegible]. That is not right.

Mr. [illegible] the value of the assets [illegible] [illegible].

THE COMMISSIONER: Mr. Howson has another measure and you say that is not right; what is right?

MR. KELLOCK: What I say, my lord, the value of the assets of the company behind the shares.

THE COMMISSIONER: Just the value of the assets; that is the factory and the land and the machinery.

MR. KELLOCK: Less liabilities, the shareholders' equity in the company's assets less liabilities.

MR. McRUER: The common stock equity you mean.

MR. KELLOCK: I do not mean the common stock equity. My friend should not put that in my mouth. I mean the shareholders' equity, and in my brief, my lord, when I come to it --

THE COMMISSIONER: Then, you mean the assets, the tangible assets.

MR. KELLOCK: Not only tangible.

THE COMMISSIONER: Well, the assets, the property, machinery, good will, I suppose you would say.

MR. KELLOCK: No, when I come to deal with it, my lord, I am only taking the value of the shares, and if the company has surplus assets over and above that --

THE COMMISSIONER: You say the value of the shares.

MR. KELLOCK: That would be the par value of the shares plus any surplus that is in the company --

THE COMMISSIONER: There is no par value to modern shares. They are bought and sold without any par value.

MR. KELLOCK: One can go back to the point where they had a par value, but that doesn't matter. You

THE COMMISSIONER: Mr. Howson has another measure and you say that is not right; what is right?

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THE COMMISSIONER: Just the value of the assets; that is the factory and the land and the machinery.

MR. KELLOCK: Less liabilities, the shareholders' equity in the company's assets less liabilities.

MR. MONTGOMERY: The common stock equity you mean.

MR. KELLOCK: I do not mean the common stock equity. My friend should not put that in my mouth. I mean the shareholders' equity, and in my brief, my form, when I come to it —

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THE COMMISSIONER: You say the value of the shares.

MR. KELLOCK: That would be the par value of the shares plus any surplus that is in the company —

THE COMMISSIONER: Even if no par value to shares. They are bought and sold without any par value.

MR. KELLOCK: You can go back to the point where they had a par value, but that doesn't matter. The

You can take the assets of the company less its liabilities, and that is the shareholders' equity, and that, I submit, is the shareholders' capital, the company's capital, and it is the return on that which gives the true picture.

One other thing with regard to the capital employed which my friend uses. It is the same sort of thing as the illustration in connection with inventory that I gave your lordship, but it is different. Suppose these companies borrow --

THE COMMISSIONER: Have you worked out any sheet of any sort on the basis you are putting forward now to give me an idea of what you would arrive at?

MR. KELLOCK: Yes, my lord; I want to come to that.

THE COMMISSIONER: You come to this again; you are not at it now.

MR. KELLOCK: I am coming right up to it, but I want to point out first the infirmities, what I regard as the infirmities in the method used, and another one, my lord, is that these companies frequently throughout the year have borrowings from the bank at one period which they would not have at another. Now, my lord, the company may have what you might call free funds which are invested. They would be invested outside the business, and Mr. Howson eliminates them but I do not quarrel with that. At the same time that the company has its investments it borrows from the bank because it borrows for temporary purposes during the year. It is a convenient

You can take the assets of the company less its liabilities, and that is the shareholders' equity, and that, I submit, is the shareholders' capital, the company's capital, and it is the return on that which gives the true picture.

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MR. MILLSON: Yes, my lord; I want to come to that.

THE COMMISSIONER: You come to this again; you are not at it now.

MR. MILLSON: I am coming right up to it, but I want to point out first the infirmities, what I mean as the infirmities in the method used, and another one, my lord, is that these companies frequently throughout the year have borrowings from the bank at some special time. They would not have it anyhow, my lord, the company may have what you might call free funds which are invested. They would be invested outside the business, and Mr. Howson eliminates them but I do not quarrel with that. At the same time, the company has a large investment it borrows from the bank because it borrows for investment purposes during the year. It is a company

thing to do. It is the only practical thing to do because the company cannot be selling its securities and using the money for a couple of weeks or a month and then re-investing it in investments, and losing the investment in the meantime; so that these companies borrow periodically and irregularly throughout the year in accordance with the demands of the business. If one takes the capital employed on one day again you might be taking a figure whereas the actual capital employed, if you are going to include it from all sources, in eleven months of the year might have been very much larger than on the day on which you take it --

THE COMMISSIONER: On account of these borrowings?

MR. KELLOCK: Yes, my lord, if you include the borrowings in capital employed. My submission is you cannot begin at that one day of the year but you ought to average it if you are going to set up against that the total revenue in the year and say the revenue is so much in percentage of the capital employed, as these exhibits do, and my friend has adopted them in his presentation. Then, my lord, it is to be remembered also --

THE COMMISSIONER: According to Mr. Howson's way at the end of the year you have got rid of all these things. Your temporary borrowings are not there.

MR. KELLOCK: May or may not be.

THE COMMISSIONER: Well, he has not considered them.

things to do. It is the only practical thing to do because the company cannot be selling its securities and using the money for a couple of weeks or a month and then re-investing it in investments, and loosing the interest in the meantime; so that these securities become practically and immediately throughout the year in accordance with the demands of the business. If one takes the capital employed as now for such purposes, the bottom figure whereas the actual capital employed, if you are going to include it from all sources, in eleven months of the year might have been very much larger on the day or which you take it --

[illegible]: On account of these borrowings.

Mr. Chairman: Yes, my lord, if you include the borrowings in capital employed. My submission is you cannot begin at that one day of the year but you ought to average it if you are going to put up a case that the total revenue in the year and say the seven is so much in proportion of the capital employed, as these critics do, and by Friend has grouped them in his presentation. Then, my lord, it is to be remembered also --

[illegible] according to Mr. Jeremiah, say at the end of the year you have got rid of all your debts. [illegible] something [illegible] there.

Mr. [illegible] I can be sure [illegible].

[illegible] I'll, in the [illegible]

[illegible]

MR. KELLOCK: He has not considered them at all, just has taken it on one day, whatever he finds it to be.

THE COMMISSIONER: On that day the fact remains though that these things are not there, are they? He is taking the capital employed on one day. You say by taking it at some earlier day he would have found monies borrowed from the bank there which he does not find on the last day?

MR. KELLOCK: He may or may not find. All I say is he finds a different situation on one day of the year which he would not find if he averaged the thing.

THE COMMISSIONER: On the last day there it is. You have this capital, and you have everything else; what you might call the temporary accretion of the capital is gone. It is gotten out and it is paid for.

MR. KELLOCK: But the revenue, the profits have been made on that borrowed capital, and if you apply the revenue against the capital at a day when the borrowed capital has been repaid and say that revenue has been earned on that figure; that isn't correct.

MR. McRUER: We do show it in our exhibits without bank interest and without bank loans.

MR. KELLOCK: I am not dealing with that at all.

MR. McRUER: That eliminates entirely the question of this temporary financing. What they have paid for the temporary financing they have paid.

Mr. K[illegible]: He has not considered them at all, just has taken it on one day, whatever is time it to be.

The [illegible]: On that day the last [illegible] though that these things are not there, are they? He is taking the capital as stored on one day. For say by taking it at some earlier day he would have some monies borrowed from the bank there which he does not find on the last day?

Mr. [illegible]: He may or may not find. All I say is he finds a different situation on one day of the year which he would not find if he averaged the thing.

The [illegible]: On the last day there it is. You have this capital, and you have everything else; what you might call the temporary accretion of the capital is gone. It is gotten out and it is paid for.

Mr. [illegible]: But the revenue, the profits have been made on that borrowed capital, and if you apply the revenue against the capital at a day when the borrowed capital has been repaid and say that revenue has been earned on that figure; that isn't correct.

[illegible] be in [illegible] or [illegible] without bank interest and without bank loans.

Mr. K[illegible]: I am not dealing with that at all.

Mr. [illegible]: That eliminates practically the question [illegible]. That [illegible] the suggestion [illegible] may have said.

Then, it is taken out of it and it is shown without bank interest and without bank loans, and in certain cases you can take the earning is higher when you take the bank loan into consideration because they have made more than the amount they have paid the bank.

MR. MALLOCK: If my friend had used in his brief the figure of net profits after payment of bank interest, bond interest and so on, I would not be wasting his lordship's time. I am directing my attention now to the method which my friend has used, and I am pointing out, or trying to point out, the infirmities in it.

There is another thing, my lord, about the figure of capital employed which is used, and that is it includes tangible capital only. All good will, patents --

THE COMMISSIONER: Give me one of those sheets where the capital employed is set out.

MR. McRUER: Take exhibit 998.

MR. MALLOCK: I have got 1082 in front of me, my lord. On page 2 of exhibit 1082 your lordship sees that the sheet starts off with working capital so much, fixed assets less depreciation reserve so much. Adding those together one gets the capital employed in the industry. Now, the company has in addition to that outside investments, goodwill, patents, trade marks, etc, investment in subsidiary companies of additional amounts, and then they take off investment in and advances to subsidiary companies in this

tion, it is taken out of it and it is known without bank interest and without bank loans, and in certain cases you can take the earning in that when you take the bank loan into consideration because they have made more when the amount they have paid the bank.

MR. KELLOCK: If my friend had used in his brief the figure of net profit before payment of bank interest, bank interest was so on, I would not be wasting his lordship's time. I am directing my attention now to the method which my friend has used, and I am pointing out, or trying to point out, the infirmities in it.

There is another thing, my lord, about the right of capital employed which is used, and that is it includes inventory [illegible] parts --

THE COMMISSIONER: Give me one of those where the capital employed is set out.

MR. KELLOCK: I have got 1088 in front of me, my lord. On page 2 of exhibit 1088 your lordship sees that the sheet starts off with working capital so much, fixed assets less depreciation reserve so much. Adding those together one gets the capital employed in the industry. Now, the company has in addition to that outside investments, goodwill, trade marks, etc., [illegible] [illegible] [illegible]

division which would be a repetition if it was left in. They get the total capital investment and it shows then the distribution as to how that total capital investment is made up. Then, going down to the foot of the page the exhibit goes back to capital employed in ~~the~~ industry as above and that is the third figure on the page. That is the working capital and the fixed assets less depreciation. Then, the exhibit takes off from that any appraisal write-ups and gets the figure of capital employed in the industry, as adjusted. Then, if your lordship turns over the page your lordship sees at the foot of the page the ratio of net profit from operations to capital employed in the industry (as adjusted for appraisal write-ups), so much. Now, the net profit -- your lordship goes up to the first subdivision on that page. Your lordship sees the total net profit there and then below that it has "applied as follows". That is, the bond interest has not been taken out of it and income taxes in this case have not been taken out of it, and that net profit before bond interest and income taxes is applied as a percentage of this adjusted capital employed in the industry which, as I have pointed out, is at one day in the year.

MR. McGUIRE: You will notice he has deducted interest on loans before arriving at the net profit.

MR. KELLOCK: In this particular case he has deducted interest on loans, but not in connection with

division which would be a revelation if it was left in. They get the total capital investment and it shows them the distribution as to how that total capital investment is made up. Then, going down to the foot of the page the exhibit goes back to capital employed in the industry as above and that is the third figure on the page. That is the working capital and the fixed assets less depreciation. Then, the exhibit takes off from that any personal write-ups and gets the figure of capital employed in the industry, as adjusted. Then, if your Lordship turns over the page your lordship sees at the foot of the page the ratio of net profit from operations to capital employed in the industry (as adjusted for personal write-ups) so much. Now, the net profit -- your lordship goes up to the first subdivision on that page. Your lordship sees the total net profit there and then below that it has written as follows: That is, the bond interest has not been taken out of it and income was in this case have not been taken out of it, and that net profit before bond interest and income has is applied as a percentage of this adjusted capital employed in the industry which, as I have pointed out is at one day in the year.

Q. Mr. Hodson: You will notice he has corrected interest on loans before arriving at the net profit.

A. Mr. Hodson: In this particular case he has corrected interest on loans, but not in connection wi

the individual companies. This is an exhibit which deals with the whole division and the method employed here when dealing with the whole division, or the companies that are in this, the reporting companies, the interest on loans is taken out before the net profit is arrived at. The bond interest and income tax is not. When the exhibits deal with individual companies then the interest on loans as well as the bond interest and income taxes are not taken out before arriving at the figure of net profit, and the loans are included in the capital. So that the method employed in dealing with the individual companies is not the same as the method employed in dealing with the industry as a group.

MR. McRUER: If we used the other method then you could not group them in this way.

THE COMMISSIONER: Do I understand in the case of the individual companies the loans are added to the capital?

MR. HOWSON: Yes, sir.

THE COMMISSIONER: You get it that way then.

MR. HOWSON: We did not have complete information on the whole group; that is why it had to be set up this way.

THE COMMISSIONER: It comes to the same thing in the case of the individual company. The loan is considered part of your capital.

MR. McRUER: We could not class together two different methods of financing, one that finances by

the individual companies. This is an exhibit which deals with the whole Dominion and the methods employed here when dealing with the whole Dominion, or the companies that are in this, the reporting companies, the interest on loans is taken out before the net profit is arrived at. The bond interest and income tax is not. When the committee deal with individual companies then the interest on loans as well as the bond interest and income taxes are not taken out before arriving at the figure of net profit and the loans are included in the capital. So that the method employed in dealing with the financial companies is not the same as the method employed in dealing with the industry as a group.

Mr. McCUAIG: If we used the other method then you could not group them in this way.

The COMMISSIONER: Do I understand in the case of the individual companies the loans are added to the capital?

Mr. McCUAIG: Yes, sir.

The COMMISSIONER: You put it out very clear.

Mr. McCUAIG: We did not have complete information on the whole group; that is why it had to be set up this way.

The COMMISSIONER: It comes to the same thing in the case of the individual company. The loan is [illegible] part of your capital.

Mr. McCUAIG: We could not close together two different methods of financing, one the finances by

bank loan and the other. If we put them in a composite statement such as this it would not be right. When we are dealing with an individual company we can set the whole thing out because we know its affairs.

MR. KELLOCK: On page one of this exhibit, my lord, the preceding page, they start off with working capital and fixed assets less depreciation reserve and we get this figure of capital employed in the industry.

THE COMMISSIONER: In the case of working capital loans are not included there, Mr. Howson?

MR. KELLOCK: One cannot tell because if you go down the page --

THE COMMISSIONER: Just a minute; were loans included in the expression "working capital"?

MR. HOWSON: Bank loans are not included; loans other than current.

THE COMMISSIONER: Yes, permanent loans, long term loans. Bank loans are not included there.

MR. HOWSON: No. We deduct bank interest in the next statement.

MR. KELLOCK: Then, when you go to the individual company you do include bank loans.

MR. HOWSON: Yes, because we had the information in those cases and we did not have complete information here.

MR. KELLOCK: So you have to remember that in looking at these exhibits, if you are looking at the exhibit that deals with the whole division its borrowed capital, so far as bank loans are concerned,

bank loan and the other. If we put them in a composite statement such as this it would not be right. When we are dealing with an individual company we can set the whole thing out because we know its affairs.

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MR. KELLOCK: Then, when you go to the individual company you do include bank loans.

MR. HONSON: Yes, because as has been the practice in those cases and we did not have complete information.

MR. KELLOCK: So you have to remember that in looking at these exhibits, if you are looking at the exhibit that deals with the whole division its capital employed, so far as bank loans are concerned,

they are apparently not in the capital employed, but you go to the exhibit that deals with an individual company and it has; so there is no uniformity in that respect.

THE COMMISSIONER: No, it all depends on how the subsequent items are written.

MR. McRUER: It makes very very little difference on the percentages of earnings anyway.

THE COMMISSIONER: It would increase the working capital in the case of the individual company that borrowed money.

MR. KELLOCK: Quite so.

THE COMMISSIONER: That ought to meet your desires.

MR. KELLOCK: If it was throughout the year but if it is hit or miss on a particular day --

THE COMMISSIONER: You compile me a document that will take it throughout the year and make it absolutely accurate. I will be glad to have it.

MR. KELLOCK: My submission is these exhibits dealing with capital ought to have the average throughout the year if you are going to use that method at all.

MR. McRUER: That would be a complete impossibility. You would need a statement of their bank loans every day of the year for ten years.

THE COMMISSIONER: We had other accountants before us besides Mr. Howson and nobody offered to do a thing like that. I cannot tell what it would produce, whether it would better your position or weaken it.

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[illegible] are expressly set by the Railway Commission, and you go to the exhibit that deals with an individual company and it has; so there is no uniformity in that respect.

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THE COMMISSIONER: We had other accountants before us [illegible] Mr. [illegible] and [illegible] lines [illegible]. I cannot tell what it would produce, [illegible] by small [illegible] [illegible] it.

MR. KEILOCK: Quite so; all I am saying, my lord, if one is going to use that method --

THE COMMISSIONER: I am going to have to use it now.

MR. KEILOCK: You cannot even get a true application of that method unless you average them, and it is no excuse to say it would have meant a lot of work.

THE COMMISSIONER: I don't know -- as far as the Dominion Textile Company is concerned they will speak for themselves. I don't know what they will have to tell me. As far as you are concerned this is all I have before me.

MR. KEILOCK: I am going to present to your lordship what the shareholders got. My lord, there is another thing to remember about this figure of capital employed, that is, it includes only tangible capital. I just want to give your lordship an illustration of that.

THE COMMISSIONER: What do you mean by intangible capital?

MR. KEILOCK: Intangible capital would be the value of good will. I mean real good will, the value of patents and trade marks. They are eliminated in every case. Your lordship saw they are not included in that exhibit we just looked at. I just want to refer your lordship to one piece of the cross-examination on that point, just a few lines at 12153, line 12.

"Q. Mr. Howson, have you attempted to value in any

Mr. MALONEY: Quite so; all I am saying, my lord, if one is going to use the method --

THE COMMISSIONER: I am going to have to see it here.

Mr. MALONEY: You cannot even get a true application of that method unless you average them, it is no excuse to say it would have meant a lot of work.

THE COMMISSIONER: I don't know -- in fact as the Dominion Textile company is concerned they did great for themselves. I don't know what they will have to tell me. So far as you are concerned this is all I have before me.

Mr. [illegible]: I am going to present to your lordship what the shareholders got. My lord, there is another thing to remember about this. Figure of capital employed, that is, it includes only tangible capital. I just want to give you a complete illustration of that.

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Mr. [illegible], have you [illegible] in any

"way the asset which the present company" -- this refers to Belding Corticelli, my lord. It had acquired the assets of four other companies as going concerns and which did have valuable trade marks.

"Q. Have you attempted to value in any way the asset which the present company got when it bought the business of the preceding companies?

A. No, I was just taking the company's own figures for these values".

THE COMMISSIONER: Well, for these values; wasn't that fair enough?

MR. KELLOCK: Yes, my lord, but it is the rest of it I am interested in.

"Q. Well, in eliminating goodwill of some $940,000 which appears in the company's books have you done that without attempting to find out whether or not that goodwill had any value or not? You just discarded it?

A. Just discarded it, yes."

So that is intangible capital, whether it had a value or not. That is only an illustration. Mr. Howson used the same method throughout. Intangible capital, whether or not it had a value, is simply deducted from capital employed notwithstanding that it was paid for either by shares or in any other way. It has simply been deducted, and therefore one has to remember that.

MR. McRUER: What was paid for those shares that were issued on that?

MR. KELLOCK: One has to remember that in

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"Q. He based value the present Company — this reduced to dollars recently, so Jack. It had certain the assets of two other companies of quite different and which did have valuable trade marks.

"Q. Have you attempted to value in any way the asset which the present company got when it bought the business of the predecessor company?

A. No, I was just taking the company's own figures for these values".

THE COMMISSIONER: Well, for these values, wasn't that fair enough?

MR. ROBSON: Yes, my lord, but it is the part of it I am interested in.

"Q. Well, in obtaining goodwill of some 1960,000 which appears in the company's books have you done that without attempting to find out whether or not that goodwill had any value or most?

You just disregarded it?

A. Just disregarded it, yes."

So that is indemnifie capital, whether it had a value or not. That is only an illustration. Mr. Dobson used the same method throughout. Intangible capital, whether or not it had a value, is simply deducted from capital employed notwithstanding that it was paid for either by shares or in any other way. It has simply been deducted, and therefore one has to remember that.

MR. [illegible] Did we [illegible] the [illegible] also been issued to [illegible]

MR. [illegible] [illegible] [illegible]

connection with considering what capital employed, as used, means. I am just pointing that out to your lordship.

Now, it may be your lordship may consider that the method adopted is of value. It has been suggested it is of value because you can get a comparison of some sort. My submission to your lordship, for what it may be worth, is that that comparison is not of great value, if it is of any, that the final analysis must be made on the basis of the returns to shareholders, and in any comparison which one makes, my lord, one has to keep in mind the difference in the product of a company, the difference in operations of a company, one company as compared to another, the difference in the degree to which a company fabricates a product, a raw material; all that makes a tremendous difference and may account for all the difference in the earnings of the two companies.

So that if you take a group of companies in any one division and you lay them out on this comparative basis you have still got to consider that the differing results may be due to the difference in the material used, or their operations, all those factors. That must be kept in mind, and that is all I point out to your lordship.

Now, my lord, there is another thing about including borrowed capital in the figure of capital which you look at for the purpose of seeing what your earning on that capital has been. Your lordship knows this very well, and I am only mentioning it briefly, but

[illegible] are [illegible] [illegible] [illegible]

I think it is important, and that is that money borrowed by a company for the purpose of increasing its sales, or whatever it may be, in connection with borrowings of that kind there is no joint venture between the lender, where he is a bank, and the borrower, or a bondholder and the borrower. It is not a joint venture. There is no division of the return on that capital. The creditor has got to be paid whether the borrower gets any money or not, and therefore I submit that is another objection to using capital which includes capital from borrowed sources which is a debt which must be paid by the borrower, and it is not a joint enterprise in any way. The person who is in the business, who assumes the risks of the business, is the shareholder. He has to assume the risk of the debt and the risk of being able to pay it back with interest, and my submission is that one should centre one's attention on what the shareholder is able to do and has been able to do. Now, my friend does not present the point of view as to the result of the earnings to the companies -- I mean by that the corporate shareholders -- at all. He uses these other figures entirely, and in dealing with the exhibits which cover these so called representative companies it is important to bear in mind that these so called representative companies are the more successful companies. That is the evidence of Mr. Howson, and I have the references here if your lordship wants them. These representative companies, I submit it is a misuse of that

I think it is important, and that is that money borrowed by a company for the purpose of increasing its sales, or whatever it may be, in connection with borrowings of that kind there is no joint venture between the lender, whether it is a bank, or the money, or a lender and the borrower. It is not a joint venture. There is no division of the return on that capital. The creditor has got to be paid whether the borrower gets any money or not, and therefore I submit that is another objection to using capital which involves capital from borrowed sources which is a debt which must be paid by the borrower, and it is not a joint enterprise in any way. The person who is in the business, who assumes the risks of the business, is the shareholder. He has to assume the risk of the debt and the risk of being able to pay it back with interest, and my submission is that one should confine one's attention on what the shareholder is able to do and has been able to do. Now, my friend does not present the point of view as to the result of the granting to the companies -- I mean by that the corporate shareholders -- at all. He uses some other figures entirely, and in doing all the exhibits which cover these so called representative companies it is important to bear in mind that these so called [illegible] is the criterion of it. However, and I have the [illegible] if your Lordship wants them. There [illegible]

word. Representative companies would be representative of the experience of the entire industry. It does not mean that as applied to these exhibits. It means the experience of the more successful companies, and I ask your lordship to keep that in mind.

Another thing, my lord, is that these exhibits do not deal with any companies except the companies that have reported here, and they do not deal with companies which have passed out of business during the period under investigation. Mr. Whiteley was good enough to prepare a list of the companies which have come into being and gone out of being in the period, and I think that is before your lordship although I don't know that it has been marked as an exhibit.

MR. McRUER: You do not expect protection for them, do you?

MR. KELLOCK: I think perhaps it might be marked as an exhibit.

SECRETARY WHITELEY: It has not been filed as an exhibit.

THE COMMISSIONER: We better file it.

SECRETARY WHITELEY: It is downstairs.

MR. KELLOCK: Then, my lord, I want to come to the first page of section "D" of my factum, and I point out there some of the things about these exhibits which the exhibits do not explain, and that one would have to know in reading the exhibits.

MR. McRUER: Section "D"?

work. Legislative committee would be representatives of the experience of the public industry. It does not mean that as applied to these entities. It means the experience of the more economical companies, and I ask your lordship to keep that in mind. Perhaps, my lord, it also does not do not deal with any companies except the companies that have reported here, and they do not deal with companies which have passed out of business during the period under investigation. Mr. Whitney was good enough to prepare a list of the companies which have come into being and gone out of being in the period, and I think that is before your lordship although I don't know that it has been marked as an exhibit.

Mr. McKay: You do not argue anything from that do you?

Mr. Sullivan: I think perhaps it might be marked as an exhibit.

Commissioner McCrae: It has not been filed as an exhibit.

Mr. Sullivan: It is mentioned.

Commissioner McCrae: It is mentioned.

Mr. Sullivan: Then, my lord, I may be wrong in the right time of applying the of [illegible], and I [illegible] that the [illegible] which the [illegible] is not [illegible], and that the [illegible] have to come in [illegible] the [illegible].

MR. KELLOCK: Section "D".

THE COMMISSIONER: Finances and Taxation.

MR. KELLOCK: I say that my friend --

"--through the Commission auditor has presented numerous statements to the Commission purporting to show, amongst other things, the capital invested in the Industry, the results of the operations of different manufacturing groups and of individual companies in the industry over a period of ten or more years including the gross and net profits and the relation of these profits to the capital invested. It is submitted that in a great many cases these statements are drawn up in such a way that the profits shown appear much greater than they actually were - in fact, in scarcely one single instance is a correct presentation made of the earnings of a company or of a division. Accounting phrases have been used in especially restricted senses without any indication that such is the case and ratios have been set side by side which are not comparable without any indication being given as to the significance of the variations. There are numerous examples of these inaccuracies many of which were brought out in cross-examination of the Commission auditor and others which are apparent to anyone who studies the statements. Under these circumstances it is submitted that the statements filed by the Commission

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"auditor cannot be relied upon to show what the profits of the companies really were during any of the years and therefore that the Commission has not received in these statements the information which it should have to form a proper opinion as to the profits which have been actually earned by the textile industry."

MR. McRUER: Do you propose to substantiate that statement?

MR. KELLOCK: I do.

THE COMMISSIONER: That is a rather long and pretty severe indictment of the auditors.

MR. KELLOCK: I am going on to give your lordship some details.

MR. McRUER: I hope my friend will substantiate it. It is a very serious charge.

MR. KELLOCK: I can tell my friend now that I am prepared to substantiate anything in this brief.

MR. McRUER: I hope you are.

MR. KELLOCK: "Without in any way attempting to be all inclusive, some of the errors in principle or in fact are set out below".

The first is net profits and I am dealing with this question of deductions which out to be made before you should use the phrase "net profit".

" Throughout the statements the term 'net profit' appears many times without any qualification. Actually in the statements submitted this is rarely used to mean the actual net profit

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"auditor cannot be relied upon to show what the profits of the companies really were during any of the years and therefore that the Commission has not received in these accounts the information which it should have to form a proper opinion as to the profits which have been actually earned by the textile industry."

MR. MACKAY: Do you propose to substantiate that statement?

MR. [illegible]: [illegible]

MR. [illegible]: That is a rather long and partly severe indictment of the auditors.

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MR. [illegible]: I hope my friend will substantiate it. It is a very serious charge.

MR. [illegible]: I can tell my friend now that I am prepared to substantiate anything in this brief.

MR. MACKAY: I hope you are.

MR. [illegible]: Without in any way attempting to be a [illegible] industry, some of the errors in [illegible] or in fact are set out below.

The first is not profits and I am dealing with this question of deductions which not to be made before you should use the phrase "net profit".

" [illegible] the [illegible] [illegible]'s expenses many times without any justification. Actually in the statements submitted this is merely used to mean the normal net profit

"of any company or group of companies. 'Net Profit' means only one thing, the balance available for the proprietors or shareholders after including all the income and all the expenses of a company, the amounts provided for income tax and any bond interest paid".

And there is plenty of authority for that.

THE COMMISSIONER: Right there, you see, you must bear this in mind, that it is one thing for a company in dealing with its own shareholders to sit down and say they have made no profits; they had to borrow so much money and pay such a high rate of interest and so on so there will be nothing to give you in the way of dividends, nothing to set aside. That is one thing, but it is another thing to come to an inquiry such as this and use the same terms in the same way for a different purpose, to show that the tariff is not high enough, for instance. Do you see what I mean?

MR. KELLOCK: Well --

THE COMMISSIONER: You see what I mean, don't you?

MR. KELLOCK: My lord, I have the greatest difficulty, to be frank, in understanding the use of the phrase "net profit" in any sense but one, and I cannot find any authority for it in any sense but one.

THE COMMISSIONER: I have tried to show you one right now. Now, a company, on account of the way it has had to do its financing, having very little money, or being short of money, having to borrow here

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the word "business or group of companies". "NET PROFITS" means gross sales less costs, we believe provision for the proprietors or shareholders after including all the income and all the expenses of a company, the amounts providing for income tax and any bond interest paid".

and there is plenty of authority for that.

[illegible] Even, you say, you have your this in mind, that it is one thing for a company in dealing with its own shareholders as it does and say they have made no profits; they had to borrow so much money and pay such a high rate of interest and so on so there will be nothing to give you in the way of dividends, nothing is set aside. That is one thing, but it is another thing to come to an inquiry such as this and use the same terms in the same way for a different purpose, to show that the profit is not high enough, for instance. Do you see what I mean?

MR. [illegible]: Well --

THE COURT [illegible]: You see what I mean, don't you?

MR. [illegible]: My Lord, I have the greatest difficulty, to be frank, in ascertaining the use of the phrase "net profit" in any sense but one, and I cannot find any authority for it in any sense but one.

[illegible]

and there, comes at the end of the year with much less money on hand to distribute to the shareholders than another company that was in a much better position to begin with. Now, before this inquiry, or before a government, where they are going to talk about tariff they are both in the same position. One cannot say "well, take our case; we didn't make as much money as they did". Do you see what I mean?

MR. KELLOCK: I agree, and I admit, my lord, that one company cannot expect --

THE COMMISSIONER: I mean whether the word "net profit" is an accurate term or not I am not being confused by what is meant by it.

MR. KELLOCK: Well, I am sure of that. Of course, my lord,--

THE COMMISSIONER: You may say now --"here is our company; we have made no net profit because we find at the end of the year, having had to pay back all the money we had to borrow temporarily, we have nothing to give to our shareholders". Perhaps they had a loss even. Alright, you have no net profit. I understand that, that your own company made no net profits, but when you come to me you say: "now, look, things are going so badly we should have more protection", or something of that sort. Well, I say "no, here is another company alongside of you. They did not have to borrow money; they started out on a sound basis and they did make a profit, 5% or 10%." They are the ones we are going to deal with as a

and there, comes at the end of the year with much
loss money on hand to distribute to the shareholders
than another company that was in a much better position
to begin with. Now, before this tribunal, or before
a government, where they are going to talk about
tariff they are both in the same position. You
cannot say "well, take our case; we didn't make as
much money as they did". Do you see what I mean
Mr. [illegible]: I agree, and I think, my lord,
that one company cannot expect --
THE CHAIRMAN: I mean in that the words
"net profit" is an accounting term or not I am not
concerned by what is meant by it.
Mr. [illegible]: Well, I am sure of that. If [illegible]
my lord,--
THE CHAIRMAN: You may say that --"Some in
our company; we have made no net profit, because we lost
at the end of the year, having has to pay back all
the money we had to borrow temporarily, we have not
to give to our shareholders". Perhaps they had a
loss even. Clearly, you have no net profit. I
understand that. But your own company made no net
profit, but what [illegible] in the [illegible] "Well,
things are going so badly we should have made sub-
section , or something of that sort. Well, I say
"no, more in another company also made no profit. They
are not going to borrow money; they borrowed not on a
[illegible] and they did make a profit, so do [illegible]
[illegible] as the same is going to deal with as a

measure of what tariff protection should be given.

MR. KELLOCK: Well then, does your lordship --

THE COMMISSIONER: I mean to say the word "net profits" is not going to mislead me in any way. You need not be afraid of that as long as I know, and I do know because there it is in black and white, what factors Mr. Howson has used in arriving at his results. Whether he calls them net profits or something else makes no difference.

MR. McRUER: Just an example, if I may interrupt for a minute; this is an example illustrated by two different statements of Canadian Cottons. In one statement, annual statement, they show "To balance; net profits to profit and loss account, $434,000". That is in 1912. Then they show what they did with it. They paid bond interest out of it.

THE COMMISSIONER: They call it net profit?

MR. McRUER: They call it net profits, and then they show paying bond interest out of it and then they show the balance. Then, in another year they do it altogether differently. They deduct their bond interest and then say "net profit for the year". There are two different statements. I expect likely I will find a different way yet in Dominion Textile.

MR. KELLOCK: Oh no; now, my friend has not correctly said what this statement means.

THE COMMISSIONER: Well, I am sorry if he hasn't. He had it right in his hand. There is no

measure of what tariff protection should be given.

Mr. [illegible]: Will them, then your [illegible] --

THE COMMISSIONER: I mean to say the word "net profit" is not [illegible] by [illegible] in [illegible]. We need not be afraid of that as long as I know, and I do know because there it is in black and white, what factors Mr. Dawson has used in arriving at his results. Rather he calls them net profits or [illegible] [illegible] [illegible].

Mr. [illegible]: Just an example, if I may interrupt for a minute; this is an example illustrated by two different statements of Canadian Cottons. In one statement, annual statement, they show "Balance net profits to profit and loss account, $684,000". That is in 1912. Then they show what they did with it. They paid bond interest out of it.

THE COMMISSIONER: They call it net profit?

Mr. [illegible]: They call it net profits, and then they show paying bond interest out of it and then they show the balance. Then, in another year they do it altogether differently. They deduct their bond interest and then say "net profit for the year". There are two different statements. I expect [illegible] will find a difference [illegible] [illegible].

Mr. [illegible]: Oh no; now, my friend has not [illegible] said what this statement means.

Mr. [illegible]: Well, I am sorry if he [illegible]. He had it right in his hand. There is no

excuse for it.

MR. KELLOCK: I am sorry too. I burst out perhaps a little too frankly, but what this ~~is~~ sheet is referring to -- it is headed "manufacturing account".

MR. McRUER: Manufacturing and profit and loss statement.

MR. KELLOCK: Manufacturing account, and then it sets out raw material and so on and then "to balance, net profits to profit and loss account", not just net profits. This is what they transferred to profit and loss account for the purpose of applying it, and the net profits are --

MR. McRUER: They call it net profits.

MR. KELLOCK: Then they get that one profit and loss account and they apply the expenses against it. That is not what my friend suggests.

MR. McRUER: They call it net profits before they pay bond interest.

MR.KELLOCK: Then, if your lordship will bear with me a moment there is another aspect of this, and it is an important aspect to my clients, although I quite appreciate what your lordship says. But this is a public hearing, and these things have been called "net profits" across the breadth and length of this country, and they are not net profits, and we are being misjudged before the public by the use of these misleading terms. Your lordship understands it perfectly well because we have discussed it here, but when my friend uses it in these exhibits the public do not understand it, and we have suffered a good deal

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[illegible] for it.

MR. [illegible]: I am sorry too. I burst out perhaps a little too frankly, but what this is about is [illegible] — it is not [illegible] accounting.

MR. [illegible]: Income accounting and profit and loss statement.

MR. [illegible]: Manufacturing account, and then it sets out raw material and so on and then "to balance net profits to profit and loss account", not just net profits. This is what they transferred to profit and loss account for the purpose of equating it, and the net profits are --

MR. [illegible]: They call it net profits.

MR. [illegible]: Then they get that one profit and loss account and they apply the expressed equation it. That is not what my friend asserts.

MR. [illegible]: They call it net profits before they pay bond interest.

MR. [illegible]: Then, if your lordship will look with me a moment there is another aspect of this, and it is an important aspect to my clients, although I quite appreciate what your lordship says. But this is a public hearing, and these things have been called [illegible] country, and they are not net profits, and we are being judged before the public by the use of these misleading terms. Your lordship understands it perfectly well because we have discussed it here, but when my friend says it is these [illegible]

from what I submit is an improper use of well known accounting terms.

MR. McRUER: Have I used it improperly?

MR. KELLOCK: It is in my friend's brief to-day without a word of explanation.

MR. McRUER: No, it isn't. I have been perfectly clear in my brief. Here is a Dominion Textile statement. "Add net profits from operations". They call it net profits there, into their surplus account.

MR. KELLOCK: I will let Mr. Heward deal with that.

There is another point and that is whether or not income tax should be regarded as an expense, and I pointed out to your lordship that since the decision of the Privy Council in the Fairbank case --

THE COMMISSIONER: You said you would give me the case.

MR. KELLOCK: Yes, I have got it here. Perhaps I wanted to shorten it up. The case, my lord, is the City of Halifax versus Fairbanks Estate reported in 1928 Appeal Cases, page 117, and the argument against --

THE COMMISSIONER: What kind of a case was that?

MR.KELLOCK: It was a case of this kind --

THE COMMISSIONER: For income tax payable to the city?

MR. KELLOCK: It was business tax assessed on a property which had been rented or leased by the

from what I submit is an improper use of well known accounting terms.

MR. MORRISON: Have I used it improperly?

MR. KILLAM: It is to my friend's brief to-day without a word of explanation.

MR. MORRISON: No, it isn't. I have been perfectly clear in my brief. There is a Dominion textile statement. "Add net profits from operations". They call it net profits there, into their surplus account.

MR. KILLAM: I will let it. Howard deal with that.

There is another point and that is whether or not income tax should be regarded as an expense, and I pointed out to your Lordship that since the decision of the Privy Council in the Fairbank case --

THE CHAIRMAN: You said you would give me the case.

MR. KILLAM: Yes, I have got it here. Perhaps I wanted to shorten it up. The case, my Lord, is the City of Halifax versus Fairbanks which is reported in 1928 Appeal Cases, page 117, and the statement is --

THE CHAIRMAN: What kind of a case was that?

MR. KILLAM: It was a case of this kind --

THE CHAIRMAN: For income tax payable to the City?

MR. KILLAM: It was business tax assessed on a property which had been rented or leased by the

Fairbanks Estate to the Canadian National Railways, and the question was whether or not it was an indirect tax and therefore beyond the power of the City of Halifax, which was operating under a charter from the Provincial Government, and the board discussed the whole subject xxx of the question of income tax, and your lordship will recall that the argument against treating income tax as an expense was this, that it was supposed to be a direct tax and a direct tax on the basis of the Mill's definition was one that was seized upon the very person intended to pay it and therefore he should not pass it on or attempt to pass it on or expect to pass it on. Now, the Privy Council in their judgment discussed that whole subject.

THE COMMISSIONER: That is what they held in the case of Bank of Toronto and Lambe.

MR. KELLOCK: They discuss that case. What they say about it is this, that at the time the words "direct taxation" were written into the B.N.A. Act in 1867 that such taxes as income taxes or customs taxes were well known classes of taxation, and that the income tax was regarded by everybody as a direct tax, apart altogether from the question of incidence, and that the customs tariff, on the other hand, was regarded as an indirect tax, and that therefore when you are construing in the B.N.A. Act the words "direct taxation" you must take into consideration that perfectly widespread understanding

ROBT. BRYDIE
CHARTERED STENOGRAPHER
TORONTO CANADA

railways belonging to the Canadian National Railways, the question was whether or not it was an indirect tax and therefore beyond the power of the City of Halifax, which was operating under a charter from the Provincial Government, and the board discussed the whole subject matter of the question of income tax, and your Lordship will recall that the argument against treating income tax as an expense was this, that it was supposed to be a direct tax and a direct tax on the basis of the Mill's definition was one that was aimed upon the very person intended to pay it and therefore he should not pass it on or attempt to pass it on or succeed to pass it on. Now, the Privy Council in their judgment discussed that whole subject.

THE COMMISSIONER: That is what they held in the case of Bank of Toronto and Lambe.

MR. HALLAMS: They discussed that case. That may say about it is this, that at the time the words taxes were well known classes of taxation, and that the income tax was regarded by everybody as a direct tax, quite altogether from the question of incidence, and that the customs tariff, on the other hand, was regarded as an indirect tax, and that therefore when you are considering in the B.N.A. Act the words "direct taxation" you must take into

at that time if you are dealing with a tax which which was so understood at that time. If you are dealing with a tax of a new kind which has grown up later, such as the stamp tax, or something of that kind, then it is proper to go to economists and Mill's definition, but not when you are dealing with classes of taxation which were well understood at the time of the passing of the B.N.A. act. Their lordships set out the history of the thing and they refer to the definition of Mill, and to the previous decision of the board in Bank of Toronto v. Lambe and after that they say, just a few extracts from the judgment, my lord --

"But it must not be forgotten that the question is a legal one, viz., what the words mean, as used in this statute; whereas the economists are always seeking to trace the effect of taxation throughout the community, and are apt to use the words 'direct' and 'indirect' according as they find that the burden of a tax abides more or less with the person who first pays it".

THE COMMISSIONER: That is what they said in the Lambe case.

MR. MILLOCK: Yes, that is what they say there. Then, they go on with another opinion. I am not reading the whole judgment. Then--

"Probably it is true of every indirect tax that some persons are both the first and the final payers of it; and of every direct tax that it

at that time if you are dealing with a tax which which was so understood at that time. If you are dealing with a tax of a new kind which has grown up later, such as the estate tax, or something of that kind, then it is proper to go to economists and mill's definition, but not when you are dealing with classes of taxation which were well understood at the time of the passing of the B.N.A. act. Their lordships set out the history of the thing and they refer to the definition of Mill, and to the previous decision of the board in Bank of Toronto v. Lambe and after that they say, just a few minutes from the judgment, my lord --

"But it must not be forgotten that the question is a legal one, viz., what the words mean, as used in this statute; whereas the economists are always seeking to trace the effect of taxation throughout the community, and are apt to use the words 'direct' and 'indirect' according as they find that the burden of a tax abides more or less with the person who first pays it."

THE COMMISSIONER: That is what they said in the Lambe case.

MR. MILLER: Yes, that is what they say there. Then, they go on with another opinion. I am not reading the whole argument, then --

"Probably it is true of every indirect tax that some persons are both the first and the final payers of it; but as every direct tax must be paid

"affects persons other than the first payers". And again --"The result of these observations"-- that is taken right from the judgment in the Lambe case, my lord, which they repeat.

THE COMMISSIONER: For instance, if you come in from the United States with something you bought in your possession, a present for your wife, you pay a tax on it. It is an indirect tax. Nobody else pays it but you. You do not pass it on. On the other hand if the province imposes a tax on your real estate that is a direct tax, but if you raise your rent accordingly you are passing that on to your tenant. Nobody can prevent that.

MR. KELLOCK: The gist of this decision is that merely by calling a thing a direct tax, and therefore giving a province a right to levy it, has nothing to do with whether or not it can be passed on or should be passed on or whether the incidence goes further.

" The result of these observations, which are closely applicable to the present case, is that their lordships have primarily to consider, not whether in the view of an economist the business tax imposed on an owner under s. 594 of the Halifax city charter would ultimately be borne by the owner or by some one else, but whether it is in its nature a direct tax within the meaning of s. 92".

THE COMMISSIONER: In its nature, that is it.

"Although perhaps worse than the first phase", and again --"the result of these observations"-- that is taken right from the judgment in the Jacobs case, my lord, which they repeat.

THE QUESTION: For instance, if you came in from the United States with something you bought in your pocket, a perfectly its full size, you pay a tax on it. It is an indirect tax. Nobody else pays it but you. You do not pass it on. On the other hand if the province imposes a tax on your real estate that is a direct tax, but if you raise your rent accordingly you are passing that on to your tenant. Nobody can prevent that.

MR. [illegible]: The gist of this decision is that merely by calling a thing a direct tax, and therefore giving a province a right to levy it, has nothing to do with whether or not it can be passed on or should be passed on or whether the incidence goes further.

"The result of these observations, which are closely analogous to the present case, is that their lordships have primarily to consider, not whether in the view of an economist the business tax is ultimately to be borne as the law has ordained by the owner or by some one else, but whether it is in the nature of a direct tax or not."

"Q.E.D."

MR. KELLOCK: Yes, my lord.

"The framers of that Act evidently regarded taxes as divisable into two separate and distinct categories - namely, those that are direct and those which cannot be so described, and it is to taxation of the former character only that the powers of a Provincial government are made to extent. From this it is to be inferred that the distinction between direct and indirect taxes was well known before the passing of the Act; and it is undoubtedly the fact that before that date the classification was familiar to statesmen as well as to economists, and that certain taxes were then universally recognized as falling within one or the other category. Thus, taxes on property or income were everywhere treated as direct taxes.

On the other hand, duties of customs and excise were regarded by every one as typical instances of indirect taxation. When therefore the Act of Union allocated the power of direct taxation for Provincial purposes to the Province, it must surely have intended that the taxation, for those purposes, of property and income should belong exclusively to the Provincial legislatures, and that without regard to any theory as to the ultimate incidence of such taxation."

(page 16760 follows)

"To hold otherwise would be to suppose that the framers of the Act intended to impose on a Provincial legislature the task of speculating as to the probable ultimate incidence of each particular tax which it might desire to impose, at the risk of having such tax held invalid if the conclusion reached should afterwards be held to be wrong."

And then they say:

"The imposition of taxes on property and income of death duties and of municipal and local rates is, according to the common understanding of the term, just as the exaction of a customs or excise duty on commodities or of a percentage duty on services would ordinarily be regarded as indirect taxation; and although new forms of taxation may from time to time be added to one category or the other in accorance with Mill's formula, it would be wrong to use that formula as a ground for transferring a tax universally recognized as belonging to one class to a different class of taxation.

If this be the true view, then the reasoning of the majority of the Supreme Court of Canada requires reconsideration. It may be true to say of a particular tax on property, such as that imposed on owners by s. 394 of the Halifax charger, that the tax payer would very probably seek to pass it on to others;"

To hold otherwise would be to suppose that the framers of the act intended to impose on a Provincial legislature the task of speculating as to the ultimate incidence of each particular tax which it might desire to impose, the risk of having such tax held invalid if the conclusion reached should afterwards be held to be wrong."

and then they say:

"The imposition of taxes on property and income, death duties and of municipal and local rates is according to the common understanding of the terms just as the exaction of a customs or excise duty on commodities or of a percentage duty on services would ordinarily be regarded as indirect taxation; and although new forms of taxation may from time to time be added to one category or the other in accordance with skill's terms, it would be wrong to use that formula as a ground for transferring a tax universally recognized as belonging to one class to a different class of taxation.

If this be the true view, then the reasoning of the majority of the Supreme Court of Canada [illegible]. It may be that [illegible] is not a direct tax on property, such as that imposed on income by s. [illegible] of the [illegible] Act, [illegible] the [illegible] view [illegible] [illegible] it is not [illegible]

THE COMMISSIONER: Yes, he would raise his rent.

MR. KELLOCK: "...but it may none the less be a tax on property and remain within the category of direct taxes. Probably no one would say that the income tax levied in this country under schedule A of the Income Tax Act, although levied upon the occupier of property who is authorized to recover it from the owner, it is not a direct tax."

And he says:

"The authorities cited by Newcombe J. show the use made by this Board of Mill's definition in determining whether a new or special tax, such as a stamp duty, a licence duty or a percentage on turnover, should be classed as direct or indirect; but, with the possible exception of Cotton vs. The King (1), which seems...."

THE COMMISSIONER: That is the case in the Province of Quebec.

MR. KELLOCK: Yes.

THE COMMISSIONER: It was on succession duties?

MR. KELLOCK: Yes, on succession duties.

"....which seems to have turned on its own facts, they do not afford any instance in which a tax otherwise recognized as direct has been held to be indirect for the purposes of the British North America Act by reason of any theory as to its ultimate incidence."

THE COMMISSIONER: Yes, he would rather pay that.

Mr. GARROW: ...but it may have the effect of being a tax on property and remain within the category of direct taxes. Probably no one would say that the income tax levied in this country under schedule A of the income tax act, although levied upon the occupier of property who is authorized to recover it from the owner, is not a direct tax."

And he says:

"The authorities cited by Rowcombe J. show the use made by this court of Mill's definition in determining whether a new or special tax, such as stamp duty, a license duty or a percentage on turnover, should be classed as direct or indirect; but, with the possible exception of Cotton vs. The King (1), which seems...."

THE COMMISSIONER: That is the case in the Privy Council.

Mr. GARROW: Yes.

Mr. MILLOCK: Yes, on succession duties.

"...which seems to have turned on its own facts, they do not afford any instance in which a tax imposed on property has been held to be indirect because the payment of the tax could be shifted by the owner of the property to the purchaser or to the

And since that case, my lord ---

THE COMMISSIONER: I know, I think that is all fairly tripe, if I may say so. It is hard to imagine a tax that you might not pass onto somebody else and I think the best case in point is the tax on real property. There is a direct case and still the man who has to pay it will raise his rent. There is no power to prevent that.

MR. KELLOCK: The analogy I am coming to, merely because you call income tax a profit direct tax, it does not any the less render it an expense of the business which---

THE COMMISSIONER: What I say is this: Here is income tax, it is a tax on what?

MR. KELLOCK: On profits.

THE COMMISSIONER: Not on revenue as in the case of individuals. It is on profits after all expenses paid. When I learn that the income tax is passed on, if it is physically possible to do so, to the consumer and considered as part of the expenses and the profits only calculated after that, well then, I say; here is a tax that you are not paying at all, that the consumer is being made to pay. What I told Mr. Bruneau was this - he was raising the point, "Oh, this should be kept secret, it is sacred, this income tax." Income tax, nothing. If you are going to make the public pay for it then you have no right to secrecy other than you have to the customs tax or the excise tax.

and since that case, my lord ---

THE CHAIRMAN: I know, I think that is all fair enough, if I may say so. It is hard to imagine a tax that you might not pass onto somebody else and I think the most case in point is the tax on real property there is a direct case and still the man who has to pay it will raise his rent. There is no power to prevent that.

MR. KEELOCK: The analogy I am coming to, merely because you call income tax a profit direct tax, it does not say the Land reader it as expense of the business ---

THE CHAIRMAN: What I say is this: here is income tax, it is a tax on money

MR. KEELOCK: On profits.

THE CHAIRMAN: Not on revenue as in the case of individuals. It is on profits after all expenses are paid. When I mean that the income tax is passed on, if it is physically possible to do so, to the consumer and considered as part of the expenses and the profits only calculated after that, call them, I say, here is a tax that you are not paying at all, that the consumer is being made to pay. That I said to Mr. Brennan was this - he was raising the point, "Oh, this should be real revenue, it is revenue, this revenue tax" ---

---, nothing. If you are going to make the public

[illegible]

MR. KELLOCK: If that is all there is to it, my lord, I misunderstood.

THE COMMISSIONER: There is another point - I don't know how the Income Tax Department would view this - as to what might happen to you if they find you have added your income tax on to your price, make it part of your costs, and got your profit afterwards.

MR. KELLOCK: No, my lord, there is nothing secret about that.

THE COMMISSIONER: I am not saying there is.

MR. KELLOCK: The whole of my income, the whole of my expense is open and revealed each year to the Department and they know.

THE COMMISSIONER: You must not misunderstand me. I never said anything to the contrary.

MR. KELLOCK: My lord, I submit now even the Income Tax Department could not have any objection.

THE COMMISSIONER: I just say this, so far as the point you are dealing with now, the tax is one which under the Act is to be levied on your profits. The profit is what is left to you, is not it, after you have paid all your expenses, then you have your profits. Now, out of those profits you pay the income tax. All right, I do not care anything about it. My concern with it was in dealing with the case that Mr. Bruneau put up, who said that the greatest secrecy should be preserved about his income tax because of the sacredness of the character of the income tax.

Mr. KEMLOCK: If that is all, sorry to be so, my lord, I adjourn.

THE COURT: There is another point - I don't know how the Income Tax Department would view this - as to what might happen to you if they find you have added your income tax on to your price, made it part of your costs, and got your profit afterwards.

Mr. KEMLOCK: My, my lord, would be talking nonsense about that.

THE CONSTABLE: I am not saying that to you.

Mr. KEMLOCK: The whole of my income, the whole of my expenses is open and revealed each year to the Income Tax and they know.

THE CONSTABLE: You must not misunderstand me. I never said anything to the contrary.

Mr. KEMLOCK: My lord, I submit now even the Income Tax Department would not have any objection.

THE CONSTABLE: I have my doubts, we are not the people you are dealing with now, the tax is one which under the Act is to be levied on your profits. The profit is what is left in your, in your, after you have paid all your expenses, then you have your profits, now, out of those profits you pay the income tax. All right, I do not care anything about it. My question only is as to dealing with the case that we, who said that the contract company should be brought under the Income Tax Ordinance of the Colony, the Ordinance of the Colony.

Well, I said, if you are making the consumer pay it it is his business to know what it is.

MR. KELLOCK: I am dealing with more general matters.

MR. McRUER: I press it one step further.

MR. KELLOCK: I know my friend does.

THE COMMISSIONER: I will hear Mr. McRuer when the time comes.

MR. KELLOCK: My friend has ignored what I call one of my expenses, that is income tax, and without reading I want to give your lordship ---

THE COMMISSIONER: You mean to say in those statements.

MR. KELLOCK: And in his brief, and my submission is there is no net profit until the company has paid income tax.

THE COMMISSIONER: That is an entirely new question. Now you are dealing with a new question. You are back again to interpretation of the words net profits.

MR. KELLOCK: Yes, and I want to give your lordship my authority for that.

Now, my lord, Mr. Howson in the box, and my friend adopts it, says when the company pays its income tax that is a very friendly proceeding, that is just a division of the profits with the Department. When one looks at the only book on income tax in this country one finds that stated but when you look at the authority for that you find it is the case of the Attorney General and Ashby, which is in regard to

well, I said, if you are making the commutation pay it it is his business to know what it is.

MR. KELLOCK: I am dealing with more general matters

MR. MOFFAT: I press it one step further.

MR. KELLOCK: I know my friend does.

THE COMMISSIONER: I will hear Mr. Kellock when the time comes.

MR. KELLOCK: My friend has ignored what I call one of my expenses, that is income tax, and without reading I want to give your lordship ---

THE COMMISSIONER: You mean to say in these states-ments.

MR. KELLOCK: and in his order, and my submission is there is no net profit until the company has paid income tax.

THE COMMISSIONER: That is an entirely new question now you are dealing with a new question. You are back again to interpretation of the words net profits.

MR. KELLOCK: Yes, and I want to give your lordship my authority for that.

Now, my lord, Mr. Dawson in the box, and my friend Mr. Moffat, have made the statement that the income tax that is a very reasonable proposition. This is just a statement of the profits made by the company. The income tax is the only thing that we have got in this company was three years ago. Look at the summary for that you find it is the same. Of the income tax (illegible)

English Income Tax. It is not Income tax in Section A, that is referred to in the Fairbanks case. It is the English Income Tax on profit. That is an entirely different income tax than our own. When a company pays income tax on its profits in England it pays it not for itself, as a debt of itself, but on behalf of the shareholders, and the cases in England in dealing with that situation ---

THE COMMISSIONER: Do you mean to say that the tax do by the shareholder on shares is paid by the company?

MR. KELLOCK: Yes, at the source.

THE COMMISSIONER: It would save the shareholder a lot of trouble.

MR. KELLOCK: Yes.

THE COMMISSIONER: He gets whatever is left free of tax.

MR. KELLOCK: The way the cases put it - when the shareholder gets his dividends he gets his dividends, plus his indemnity against tax that he ought to pay. That is not our income tax. It is the income tax here I am dealing with, income tax which is levied on the company itself and is the debt of the company to the Crown, and you have exact parallel situation in England in connection with excise profits duties, which is a tax on profits. Now, my lord, the cases which deal with them are three, if your lordship is interested. The first one is Collins vs. Sedgwick, in 1917, 1 Ch. 179. I refer your lordship to the

English income tax. It is not income tax in exactly the sense that is referred to in the Fairbanks case. It is an English income tax on profit. That is an entirely different income tax than our own. When a company pays income tax on its profits in England it pays it not for itself, as a debt of itself, but on behalf of the shareholders, and the cases in England in dealing with that situation ---

THE COMMISSIONER: Do you mean to say that the tax so by the shareholder on shares is paid by the company?

MR. ELLIOTT: Yes, at the source.

THE COMMISSIONER: It would save the shareholder a tax on income.

MR. ELLIOTT: Yes.

THE COMMISSIONER: He gets whatever is left free of tax.

MR. ELLIOTT: The way the courts put it - when the shareholder gets his dividends he gets his dividends, plus his ratably equitable tax that he ought to pay. That is not our income tax. It is the income tax here I am dealing with. Income tax which is levied on the company itself and in the hands of the company to the Crown, and you have exact parallel situations in England in connection with excess profits duties, which is a tax on profits. Now, my lord, the cases interested. The first one is Collins vs. Regulator, in 1927, A.C. 171. I refer to that because in the

judgment of Mr. Justice Peterson, page 183 and following pages. The next case is the case of Patent Castings Syndicate, Limited v. Etherington, That is in 1919, 2 Ch. 254. That is a decision of the Court of Appeal. The last case I want to trouble your lordship with, which clears away a good many of the other decisions, is the case of Vulcan Motor v. Hampson in 1921, 3 K.B. 597.C.A., also a decision of the Court of Appeal. Now, those cases distinguish between income tax on profits and excess profits duty, and they hold that in the case of excise profits duty as it is not paid on behalf of the shareholder but as a debt of the company itself. That it is merely an expense of the business, and I would like to read one paragraph of the judgment of Scrutton L.J., in the Vulcan Motor v. Hampson case, where he says:

> "One may speak of receipts or turnover without deducting the expenses of earning them, but it appears to me meaningless to describe receipts as profits without taking into account the expenses of earning the receipts. When therefor clause 5 speaks of 'profit earned by the company' in my view it means profits earned by the company after deducting the expenses of earning them which is substantially the same as the expression 'net profits' in Etherington's case. If so, I have the decision of this court that the company in calculating the commission

Patent Castings Syndicate, Limited v. Commissioners, That is in 1919, 2 Ch. 884. That is a decision of the Court of Appeal. The last case I want to crave your lordship with, which clears away a good many of the other decisions, is the case of Vulcan Motor v. Hampson in 1921, 8 K.B. 807, C.A., also a decision of the Court of Appeal. [illegible] between income tax on profits and excess profits duty and they hold that in the case of excess profits duty as it is not paid on behalf of the shareholder but as a debt of the company itself. That it is merely an expense of the business, and I would like to read one paragraph of the judgment of Scrutton L.J., in the Vulcan Motor v. Hampson case, where he says:

"One may speak of receipts or turnover without [illegible] as profits without taking into account the [illegible] for clause 3 speaks of 'profit earned by the company' in my view it means profits earned [illegible]

is entitled to deduct the excess profits duty.""

That is on page 605 and then on page 606 he goes on:

"Profits' mean profits after deducting the expenses of earning them and the decision in Etherington's case binds one to say that one of the expenses of earning them is the payment of excess profits duty."

Now, my lord, my submission is that when one deals with the Dominion Income Tax it is the same thing, it is expense of the business, and when one comes to the Dominion Companies Act, which I set out on page 2 of my Factum, which is found in Section 113, sub-section 3, which deals with the statement which a company must set before its shareholders at every annual meeting, that that sub-section recognizes the decisions I have just mentioned and recognizes clearly that there is no such thing as a net profit until income taxes have been deducted, and my submission is it is perfectly proper, it is the legal way to regard income tax paid in Canada as an expense and it must be deducted before net profit is arrived at.

THE COMMISSIONER: Well, we will resume later.

-- Adjourned at 3.45 P.M. for recess.

In addition to Member Ian Gordon Grant's story, that is on page 905 and then on page 906 he goes on:

"Mr-Gilbe" Mon profits over expenses

expenses of earning them and the decision in

Mabel-Grant's case bring out so very that one

of the expenses of earning them is the payment

of excess profits duty."

Now, my Lord, my submission is that when one deals with the Dominion Income Tax it is the same thing, it is expenses of the business, and when one comes to the Dominion Companies Act, which I set out on page 2 of my factum, which is found in section 113, sub-section 3, which deals with the statement which a company must set before its shareholders at every annual meeting, then that sub-section recognizes the decisions I have just mentioned and recognizes clearly that there is no such thing as a net profit until income tax has been deducted, and my submission is that the contrary decision in the Legal case is wrong. My point is that it is arrived at.

Mr. Justice Duff, on all these Cases.

-- Adjourned at 5.45 P.M. for recess.

-- On resuming at 4.05 P.M.

MR. KELLOCK: I think I have discussed orally pretty well the contents of paragraphs 4 and 5. There is no use repeating that.

Paragraph 6: "Return on Common Stock Equity: The Commission auditor attempted to show for most of the individual companies reported upon what the net return had been on the common share equity, such a treatment of the earnings of a company it is submitted is quite wrong. It is purely an internal matter how and what securities of a company are issued. For instance, if two companies could each earn 10% on their investment but the first company had obtained 50% of its capital by issuing 5% preference shares while the other company had issued common shares only the first company would show earnings of 15% on its common stock and the other company would show earnings of 10%; but while the common shareholders in the former company obtain a higher return on their investment they do so only by increasing the risk; their position has been weakened by the existence of prior liens against the company' assets so that in the event of winding up the preferred shareholders would have the first claim on the proceeds of the assets and the common shareholders would have to take what was left and in case of earnings falling off the

on resuming at 4.00 p.m.

Mr. [illegible]: I think I have discussed really pretty well the contents of paragraphs 4 and 5. There is no one responding that.

Paragraph 6: "A Look at Common Stock Equity:

The Commission auditor attempted to show for most of the individual companies reported upon what the net return had been on the common nominally. Such a treatment of the earnings of a company it is analyzed in quite order. It is worth an interesting matter how and what securities of a company are issued. For instance, if two companies could earn 10% on their investment but the first company had retained 50% of its profits in lieu of employing them with the other company had issued common shares only the first company would show earnings of 10% on its common stock and the other company would show earnings of 10% but while the common shareholders in the former company gain a higher return on their investment they do so only by increasing the risk; their position has been weakened by the existence of prior liens against the property. Should the fund in the event of wind-up be the preferred shareholders would have the first claim on the proceeds of the sale and the common shareholders would have to take what was left. In such an instance the [illegible]

preferred shareholders' position would be the better because they would receive a full dividend out of what earnings were available the balance only belonging to the common shareholders.

Paragraph 7.

It is submitted the only earnings which can properly be considered in order to measure the profitability of a company or of an industry is the net profit available to all shareholders (or to bondholders and shareholders) and this of course must be after deducting what income taxes are payable. Yet this very obvious measure of earnings was never presented by the Commission auditor."

Then, my lord, the next paragraph, there is a situation dealt with there: "Preferred dividends ignored in calculating return on common stock equity:"

MR. McRUER: Well, I can say this to my friend, I purposely did not deal with the common stock equity in my brief or the earnings on common stock equity in my brief for the very reason that my friend expressed in paragraph 6. In regard to these other matters we quite agree with what my friend says there. These preferred dividends or cumulative dividends should be taken into consideration. I do not think I dealt with any one of those companies that are dealt with there.

MR. KELLOCK: No, but I want to deal with them.

preferred shareholders' position would be the better because they would receive a full dividend out of what earnings were available the balance only belonging to the common shareholders.

Paragraph 7.

It is essential that only earnings which can properly be considered in order to measure the profitability of a company or of an industry is the net profit available to all shareholders (or to bondholders and shareholders) and this of course must be after deducting what income taxes are payable. Yet this very obvious measure of earnings was never presented by the Commission auditor."

Then, my lord, the next paragraph, there is a situation dealt with there: preferred dividends imposed in priority rights on common stock equity:

Mr. McKinnon: Well, I can say this to my friend, I purposely did not deal with the common stock equity in my brief or the earnings on common stock equity in my brief for the very reason that my friend expressed in paragraph 6. It seems to have been common ground we quite agree with what my friend says there. These preferred dividends or cumulative dividends should be taken into consideration. I do not think I dealt with any one or three companies that are dealt with there.

MR. McRUER: You see, where the company has paid its preference dividends and the fact that the preference dividends is cumulative, it is not just easy for Mr. Howson in compiling these statements to arrive at it. We have not gone all over that.

MR. KELLOCK: No, I have not.

MR. McRUER: And what you say is right and we agree with it?

MR. KELLOCK: "Commission auditor presented figures which purport to show in the case of many of the individual compnies what was the net revenue applicable to the common stock equity only and the percentage that this revenue bears to such equity, In the case of the following companies the statements prepared it is submitted are absolutely incorrect:"

And I set out ten companies there.

MR. McRUER: Not in respect to the manner in which I dealt in my brief.

MR. KELLOCK: I am not dealing with that.

MR. McRUER: Return on capital invested in the manner I dealt with it makes no difference.

MR. KELLOCK: This was written before I had my friend's brief. Of those ten companies there are six where the dividends on the preferred stock is cumulative. In the others, three of them, are non-cumulative, and in the case of one company - well, in the case of four companies are non-cumulative, and

in the case of six are cumulative.

"In each of these cases preferred shares formed part of the outstanding capital and in all or in certain years the preferred dividends were not paid in full. No allowance was made for this in determining what revenue was applicable to the common stock equity. As an example consider the case of the company about which considerable evidence was taken, namely, the Monarch Knitting Company Limited where preferred dividends were paid only for 3¾ years of the 10 year period."

THE COMMISSIONER: That is the last ten years.

MR. KELLOCK: Yes, my lord.

"In those years in which the dividends were paid the Commission auditor deducts the amount from the net revenue available to the common stock equity, but when the dividends were not paid the Commission auditor makes no provision for this but presumes that what earnings there are, are entirely available for the common shares. This, it is submitted is untenable. A comparison of the actual revenue applicable to the common stock equity with that shown by the Commission auditor is submitted below:"

THE COMMISSIONER: Well, of course, there would be nothing for the common shares until the preferred interest was paid.

MR. KELLOCK: No. Your lordship sees there,

in the case of six are cumulative.

"In each of these cases preferred and the [illegible] of the cumulative dividend was in all or in some years the preferred dividends were not paid in full. No allowance was made for this in determining the revenue available to the common stock equity. In an example consider the case of the company about which considerable evidence has been [illegible] the American Refining Company limited where preferred dividends were paid only for 2½ years of the 10 year period."

The Commissioner: That is the last ten years.

Mr. Kilmer: Yes, my lord.

In those years in which the dividends were paid the commission auditor deducts the amount from the net revenue available to the common stock equity, but when the dividends were not paid the commission auditor makes no provision for this but presumes that that amount then was, as a matter, available for the common stock. This, it is submitted is unsound. A comparison of the actual income applicable to the common stock equity with that shown by the commission auditor is annexed below:"

The Commissioner: Well, of course, there would be nothing by the common shareholders unless the preferred later at was paid.

Mr. Kilmer: Yes, my lord.

without reading the detail of it, just what a difference it makes in this percentage of earnings on the common stock equity. Instead of there being an earning in 1926 of 4.7% on the common stock there was 2.8%. Less than enough revenue to pay the common shares anything, and the story is set out there. So that the earnings of the common shares, according to the Exhibit, are entirely incorrect and they are very much less than the exhibit shows. In paragraph 9:

> "Over the ten year period the Commission auditor's figures show a total revenue applicable to the common stock equity of $272,917 an average return of 3.3% per annum. Actually in total there was no net revenue so available. Instead there was a decrease in the common stock equity of $55,208."

And then the Hamilton Cotton Company is exactly the same, and the percentages there are set out and the correct amount. Both these companies are cumulative, and before I overlook it my submission is - it does not make any difference whether cumulative or non-cumulative, because when you take the earnings for any particular year and you want to ascertain in the case of a company where the dividends are non-cumulative what is applicable to the common stock, you cannot properly say that the whole thing is applicable to the common shares and ignore the preferred. It is quite true that there

without reading the detail of it, just what a difference it makes in this percentage of earnings on the common stock equity. Instead of there being an earning line of 4.7% on the common stock there was 8.8%. 5 been then enough revenue to pay the common shares any-thing, and the story is set out there. So that the earnings of the common shares, according to the public are entirely incorrect and they are very much less than exhibit shows. In paragraph 9: 10

"Over the last year until the Commission auditor's figures show a total revenue applicable to the common stock equity of $274,417 an average return of 8.8% per annum. Actually in total there was no net revenue so available. Instead there was a decrease in the common stock equity of $98,100." 15

20

and the percentages there are set out and the correct amount. Both these computations are cumulative, but before I overlook it my submission is - it does not make any difference whether cumulative or non-cumulative because when you take the earnings for any particular year and you want to ascertain in the case of a company where the dividends are non-cumulative what is applicable to the common stock, you cannot properly say that the whole thing is applicable to the common shares and 25 30

is no lien in the case of non-cumulative dividends but a company could not earn profit and deliberately refrain from paying any part of those profits to the preferred shareholders merely because the dividends were non-cumulative and after having accumulated a fund distributed that among the common shares. That has been the subject of litigation on the other side but I do not need to go into that. There are eight other companies and I do not detail them.

Then paragraph 11:

"Depreciation and Betterments:

In the case of Dominion Textile Company Limited and Canadian Cottons Limited the Commission auditor attempted to prove that the earnings shown by these companies were understated because of excessive charges for depreciation or by charging betterments against profits. In order to arrive at what he considers to be the earnings of the Company he adds to the profits shown in their statements the surplus of fixed asset values over book values as shown by appraisals made for insurance purposes.

It should scarcely be necessary to point out--" I am not going into this in great detail because these companies are both separately represented.

"It should scarcely be necessary to point out that the insured value of the buildings and plant of any company has no necessary relation

is no lien in the case of non-cumulative dividends but a company could not earn profit and deliberately refrain from paying any part of those profits to the preferred shareholders merely because the DIVIDENDS were non-cumulative and after having accumulated a fund distributed that among the common shares. That has been the subject of litigation on the other side but I do not need to go into that. There are other other companies and I do not detail them.

From paragraph 11:

"Depreciation and Obsolescence:

In the case of Dominion Textile Company Limited and Canadian Cottons Limited the Commission auditor attempted to prove that the earnings were by these companies [illegible] of excessive charges for depreciation or by carrying deteriorate equipment profits. In order to arrive at what is considered to be the earnings of the Company he made no the profits shown in their statements the surplus of fixed assets values over book values as shown by appreciable made for insurance purposes.

It should surely be accountry to point out I am not going into this in great detail because [illegible] are such accounting [illegible].

"It should [illegible] to [illegible] they the insured value of the [illegible] and

to what is their sound commercial value. On pages 12848 l.18 - 12859 l.3 of the evidence the Commission auditor stated that the surplus so arising might be due to any one or to a combination of the following four factors-

(1) Excessive charges to operations for depreciation.
(2) Charges of betterments against profits:
(3) Market variations in the cost of buildings, equipment and machinery;
(4) Increased value of land.

He admitted that he was unable to say how much of the appreciation was due to each of these. Yet, he prepared statements for the Commission," "showing all of such appreciation as being part of the earnings of the companies. Although the Commission auditors uses these appraisal values as above, he, himself admitted he did not know on what basis they had been made."

MR. McRUER: You mean on what basis the appraisal figures had been made?

MR. KELLOCK: Yes.

MR. McRUER: He filed the appraisal figures here.

MR. KELLOCK: Yes, but does not show on what basis:

THE COMMISIONER: Well, if it is a praisal statement it must show something.

MR. McRUER: Have you got them, Mr. Whiteley?

MR. KELLOCK: Even though that were so, my lord - I do not want to discuss this because probably my

to what is their sound commercial value. In Pages 1882 1.10 - Issue 1.2 of the evidence the Commission auditor stated that the amount so relating might be due to any one or to a combination of the following two reasons:

(1) Excessive charges to operations for depreciation.

(2) Charges of betterments against profits;

(3) Secret variations in the cost of buildings, equipment and machinery;

(4) Increased value of land.

He submitted that he was unable to say how much of the appreciation was due to each of these. Yet, in prepared statements for the Commission, "showing all of such appreciation as being part of the earnings of the companies. Likewise the Dominion-Canadian was shown appreciation value as none, so, himself admitted he did not know on what basis they had been done."

Q. Gordon: You mean on what basis the appraisal figures had been made?

A. Hilton: Yes.

Q. Gordon: So filed the appraisal figures here.

A. Hilton: Yes, but does not show on what basis:

The Commission: Well, if it is a general estimate it must show something.

Q. Gordon: Have you got them, Mr. Hilton?

A. Hilton: Even though that was so, my Lord - I do not want to disguise this because obviously my

friends will be discussing it in detail - what Mr. Howson said, I cross-examined him on it and I have very clear recollection that he did not know, this in his evidence - I will turn it up if my friend challenges it - he did not know on what basis the appraisals had been made.

THE COMMISSIONER: That is, appraisal made by somebody else?

MR. KELLOCK: Yes, made by somebody else. They were made ---

THE COMMISSIONER: These were appraisals that he found - made by the companies themselves or on their behalf.

MR. KELLOCK: Yes, but as I point out there that the basis upon which such an appraisal is made is a very material thing if you are going to say that you are going to take that and deduct from that the value of those assets on the books of the company and say that the difference is profit because if appraisal--

THE COMMISSIONER: What are you talking about by "basis" - you mean the purpose of the appraisal?

MR. KELLOCK: No, I think basis is my friend's word. What I mean by that is the valuation might be on the basis of market value or it might be on the basis of replacement cost less depreciation, and unless one knows which is the fact you cannot simply take the appraisal ---

friends will be discussing it in bands - Mr. Bowen said, I cross-examined him on it and I have very clear recollection that he did not know, that in his evidence - I will turn it up if my friend challenges it - he did not know on what basis the [illegible] had been [illegible].

THE COMMISSIONER: That is, supported mere by [illegible]

Mr. [illegible]: [illegible] "Bowen-[illegible]-Ore", that was made ---

THE COMMISSIONER: There were suggestions that it [illegible] - made by the [illegible] themselves or on their behalf.

Mr. [illegible]: Yes, but as I point out there is that the basis upon which such an a [illegible] is made is a very material thing if you are going to say that you are going to take that and detract from that the [illegible] of those stocks on the [illegible] of the company and say that the difference is profit because it's [illegible]--

THE COMMISSIONER: What are you talking about by "basis" - you mean the purpose of the [illegible]?

Mr. [illegible]: No, I think basis in my friend's [illegible] - what I meant by that is [illegible] on the basis of market value or it might be on the basis of [illegible] cost less depreciation, [illegible] - I don't [illegible] you cannot [illegible] make the [illegible] ---

THE COMMISSIONER: There might be no market value at all.

MR. KELLOCK: There might be no market value at all. Your lordship is very familiar with that in Collins, the Hotel case.

Then, my lord, in paragraph 13:

"In spite of adding back to earnings this appreciation in asset values, however, when determining the amount of capital employed, he deducts any increases in plant valuation which there may be in the books of the Company, even in cases where there has been a sale of assets from one Company to its successor, and he would not include in the capital employed the various amounts of appreciation he added back to earnings, his reason as stated in evidence, being that 'This was a Tariff enquiry'".

I don't know what that means. In other words, the amount which was said to be an addition to earnings it was an amount which was the difference between appraisal value of these fixed assets and the book values, and if that value exists any place it exists in bricks and mortar, which would be part of the capital employed but it is not included as part of the capital employed. When companies had appraisals made and issued stock on the basis of those appraisals, where there was an increase in value, your lordship will find in the exhibits that appraisal write-ups

THE CHAIRMAN: There might be no market value at all.

MR. MILLIGAN: There might be no market value it all. Your lordship is very familiar with that in Ontario, the Ontario cases.

Then, my lord, in paragraph 12:

"In spite of adding back to earnings this appreciation in asset values, however, nevertheless making the amount of capital employed, as decreases by any increases in asset valuation which there may be in the books of the Company, even in cases where there has been a sale of assets from one company to its successor, and be would not increase in the capital employed the various amounts of appreciation he added back to earnings, his reason as stated in evidence, being that 'it is was a tariff company'".

I don't know what that means. In other words, the amount which was said to be an addition to earnings it was an amount which was the difference between capitalized value of these fixed assets and the book values, and if that value exists any place it exists in bricks and mortar, which would be part of the capital employed but it is not included as part of the capital employed. Then comparing and reconciling this had figured about on the basis of those earnings [illegible] the [illegible] is right, that [illegible] [illegible] [illegible]

are simply deducted from capital employed. So that my submission is if it is a profit it is also in the capital. But these exhibits only go half way:

"In the case of Dominion Woollens and Worsteds Limited an appraisal write-up was deducted from fixed assets. The figures submitted by this company to the Commission Auditor showed a write-down of fixed assets of $580,088.07 in 1933 which is included in the increase in the Depreciation and Property Reserve from $185,741.23 to $1,408,070.39. Mr. Howson ignores the fact that the company itself has thus deducted $580,088.07 of the original write-up. Accordingly in deducting the full amount of the original write-up in the years 1933, 1934 and 1935, Mr. Howson has deducted the sum of $580,088.07 twice. Similarly inthe case of Canadian Cottons Limited (Exhibit 917) a loss on the sale of certain plants is deducted from capital without making allowance for the depreciation accumulated on the books of the Company against these plants."

Now, that is a detail. We had a good many bits of evidence, cross-examinations about that, but it is only a detail. I mention it and I am not going to take up your lordship's time further in explaining it.

Then, my lord, in regard to the position of the investor.

are simply deducted from capital employed. So that my submission is if it is a profit it is also in the capital. But these exhibits only go half way.

"In the case of Dominion Woollens and Worsteds Limited an appraisal write-up was deducted from fixed assets. The figures summarized by this company to the Commission Auditor showed a write-down of fixed assets of $380,088.07 in 1923 which is included in the ---increase in the depreciation and property reserve from $1,741,25 to $1,400,076.38. Mr. Bowson ignores the fact that the company itself has thus deducted $380,088.07 of the original write-up. Accordingly in deducting the full amount of the original write-up in the years 1928, 1929 and 1930, Mr. Bowson has deducted the sum of $380,088.07 twice.

Similarly in the case of Canadian Cottons Limited (Exhibit 317) a loss on the sale of certain plants is deducted from capital without making allowance for the depreciation accumulated on the books of the Company against these plants." Now, that is a detail. We had a good many bits of evidence, cross-examinations about that, but it is only a detail. I mention it and I am not going to [illegible] them, my lord, in regard to the position of the [illegible].

"The statements submitted are those of companies now in business. In addition to these companies many other textile companies were at some time or other operating in Canada and were wound up because they could not make profits."

THE COMMISSIONER: Here is where we had better have that exhibit.

MR. KELLOCK: Yes, my lord.

EXHIBIT 1340: Statement showing the number of Mills starting in business over certain years and number of mills closing down in certain years.

MR. KELLOCK: "Records are available as to the numberof new companies starting in business and the companies ceasing to do business, and while no attempt has been made to show what losses were sustained by companies not now in business, figures compiled from the records of the Dominion Bureau of Statistics relating to the closing and opening of Textile plants in the period 1923 to 1936 which have been forwarded to Counsel by the Secretary, Mr. Whiteley...."

That is this Exhibit.

".....indicate that in this period 548 mills of various kinds, cotton, hosiery, woollen, silk and others, with a capital of $39,415,000 commenced business, whereas 126 mills with a capital of $11,474,000 ceased to exist."

THE COMMISSIONER: I suppose some of the latter class

"The statement submitted one among
of companies now in business. In addition to the
company some twenty various companies were at work
time or under operating in Canada and some twenty
[illegible] were [illegible] specially.
[illegible] is [illegible] [illegible]
exhibit.

Mr. JUSTICE: Yes, my lord.

MARSHALL LAND: Statement showing the number of mills starting in business over certain years and number of mills closing down in certain years.

Mr. [illegible]: "Records are available as to the number of companies starting in business and the companies coming to be business, and while no attempt has been made to show what losses were sustained by companies not now in business, figures compiled from the records of the Examination Bureau of statistics relating to the closing and opening of Textile Plants in the period 1920 to 1926 which have been forwarded to Counsel by the secretary, Mr. Whitney...."

That is this exhibit.

".....indicate that in this period 248 mills of various kinds, cotton, hosiery, woollen, silk and others, with a capital of $8,410,000 commenced business, whereas 182 mills with a capital of $11,471,000 ceased to exist."

are included in the former?

MR. KELLOCK: I have no means of telling. They might be.

THE COMMISSIONER: I mean, some new ventures perhaps did not last very long.

MR. KELLOCK: Might not. You cannot tell, Mr. Whiteley?

MR. RENE: There are some of them.

MR. KELLOCK: "An investor in a new textile company is faced with the fact that the money he puts in is going into buildings, plant and inventories. In addition the company frequently borrows from banks or other sources further capital that is needed and this makes the position of the investor more speculative. If the Company earns profits in its early years, they must be largely left in the business and salaries must be kept down if the company is to prosper. The money left in the business - the undivided profits as it is called - is seldom available as cash. Instead, like the original investment, it too goes into buildings, plant and inventories. The possibility of this additional capital earning money is entirely dependant on the ability of the Company to earn a profit in future years. An idle plant is worth practically nothing more than its scrap value. Inventories can be sold for only a fraction of their book value in the

event of liquidation. Accordingly, each year that the owners of a business decide to leave all or part of the profits in the business, they gamble on the future of the business. Some of these speculations turned out profitably and much was made of such cases in the evidence; but in many cases, of which no record is available, the additional money invested as well as the original investment was lost. A complete picture of the industry therefore would have to include these new defunct companies."

My friend referred from time to time to the net profits earned as a percentage of the original capital investment.

"It is submitted that this is an absolutely incorrect method of presentation. The profits earned in the latter years were not earned on the original investment alone. They were earned on the assets of the Company- its buildings, plant, inventories, etc.- which were acquired not only out of the original capital investment but also from profits left in the business, and the earnings should be considered in relation to the capital employed. As an instance, the case of Penman's Limited might be considered. On pages 9549 and 9550 of the evidence, Commission counsel stated that the cash

event of liquidation. Accordingly, each year the owners of a business decide to leave all or part of the profits in the business, they gamble on the future of the business. Some of these speculations turned out profitably and much was made of such cases in the evidence; but in many cases, of which no record is available, the additional money invested as well as the original investment was lost. A complete picture of the industry therefore would have to include these net defunct companies.

My friend referred from time to time to the net profits earned as a percentage of the original capital investment.

It is submitted that this is an absolutely incorrect method of presentation. The profits earned in the latter years were not earned on the original investment alone. They were earned on the assets of the company (in addition, plant, inventories, etc.) which were acquired not only out of the original capital investment but also from profits left in the business, and the earnings should be considered in relation to the capital expended [illegible]

investedup to 1906 was $448,000 and that the 'net amount available for disbursement as profits after depreciation, bond interest and everything amounted in 30 years ending 1935 to - $11,130,000 in round figures,(or to $371,000 annually, or an average annual earnings of 82,8% on the cash investment of $448,000'. No allowance is made for the profits left in the business from time to time - profits which became capital and out of which the company was enabled to add to its Plant - without which additions it could neither have done the amount of business which was possible with the additional plant nor have earned the subsequent profits. Actually this company spent in Plant over one and a half million dollars in the four years 1926 to 1929 inclusive and over four and a half millions in the whole period from 1908 to 1935 and in all this time it received no new capital, all such additions coming from profits left in the business. Presumably if the methods of the Commission auditor are sound, if all the earnings during this period had been distributed as dividends and invested ~~elle~~ elsewhere, then the return on these invested dividends would have to be located and be calculated as a return on the original investment in the Penman Company. Actually, this company during the years 1926-1935 was able to earn for the

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Yesterday to 1935 was $46,000 and that the net amount available for disbursement as profits after depreciation, bond interest and everything amounted in 20 years ending 1935 to - $11,186,000 in round figures, (or to $371,000 annually, or an average annual earnings of 22.3% on the cash investment of $1,600,000. No allowance is made for the profits left in the business from time to time - profits which genuine equipment and out of which the company was enabled to aid to its plant - without which additions it could neither have done the amount of business which was possible with the additional plant nor earned the subsequent profits. Actually this company spent in plant over one and a half million dollars in the four years 1932 to 1935 inclusive and over four and a half millions in the whole period from 1922 to 1935 and in all this time it received no new capital, all such additions coming from profits left in the business. Obviously if the methods of the consolidation auditor sound, if all the earnings during this period had been distributed as dividends and invested elsewhere, then the return on those invested dividends could have to be looked and be calculated as a profit on the original investment in the common company. Actually, this company during the years 1922-1935 was able to earn for the

shareholders an average of 5.7% per annum only on the book value of their investment.V..."

MR. McRUER: That is, common shareholders you mean?

MR. KELLOCK: For the shareholders.

MR. McRUER: You mean common shareholders. 100% of common and 40% of preferred had no capital invested in it at all.

MR. KELLOCK: My friend has pointed that out several times. Perhaps my time ---

MR. McRuer: Is it the common?

MR. KELLOCK: I have a statement which gives the whole thing. I am going to refer to it in a minute.

THE COMMISSIONER: In your figures, you say, "Actually, this company during the years 1926-1935 was able to earn for the shareholders an average of 5.7%." You are not referring now to Mr. Howson's figures?

MR. KELLOCK: No. I am referring to what I will refer your lordship to in a second.

"...exclusive of goodwill, and in its most profitable year during this period the earnings were only 8.3%."

Now, statement 1, is the first statement in my Factum at the end of this Section.

THE COMMISSIONER: You have statements here?

MR. KELLOCK: Yes, my lord. Now, this shows the period---

THE COMMISSIONER: This seems to be a general state-

shareholders an average of 5.7% per annum only on the book value of their investment.'."

MR. MORGAN: That is, common shareholders you mean?

MR. KELLOGG: For the shareholders.

MR. MORGAN: You mean common shareholders. And of common and 4% of preferred had no capital invested in it at all.

MR. KELLOGG: My friend has pointed that out several times. Proceeding then --

MR. MORGAN: Is it the common?

MR. KELLOGG: I have a statement which gives the whole thing. I am going to refer to it in a minute.

THE COMMISSIONER: In your figures, you say, "actually, this company during the years 1923-1928 was able to earn for the shareholders an average of 5.7%." You are not referring now to Mr. Morgan's figures?

MR. KELLOGG: No. I am referring to what I will refer your lordship to in a second.

"...exclusive of goodwill, and in its most profitable year during this period the [illegible] earned only 6.8%."

Now, statement 1, is the first statement in my [illegible] at the end of this section.

[illegible]: You have statements later [illegible]. [illegible], No., this alone [illegible]--

THE COMMISSIONER: This seems to be a general [illegible]

ment.

MR. KELLOCK: No, only deals with the one company.

THE COMMISSIONER: Is it headed that way?

MR. KELLOCK: I think there is one statement before that one your lordship is looking at. It is headed up in the right hand corner, "Statement 1." Now, your lordship sees that the first column there is "year". After that is "so-called 'net profit' as shown on Exhibit 1070," where Mr. Howson deals with this Company, and the figures of "net profit" are taken from that source. Then there is "interest on bonds and loans." Then "Income tax." Then I arrive at the "Actual net profit." Then the "Capital employed in manufacturing operations." Then "Investments." Then "Total capital investment (exclusive of goodwill." Then I take off from that "Bonds issued" and I get the Shareholders Equity. Now, that is all the shareholders of both classes.

MR. McRUER: Which statement are you referring to?

MR. KELLOCK: Statement 1, marked in the right hand corner at the top. So that the actual net profit on the shareholders equity, eliminating the goodwill, in that first year is 8.2%, and the percentages are given all the way down. The lowest is in 1931 and were 2.7%, and the average over the period is 5.7%.

MR. McRUER: What do you mean by "Eliminating goodwill," because goodwill was charged off the profits and there is no goodwill shown on the Company statement

MR. MALLOCK: No, only deals with the one company.

MR. MALLOCK: I think there is one statement before that one your lordship is looking at. It is headed up in the right hand corner, "statement 1." Now, your lordship sees that the first column there is "year". After that is "so-called 'net profit' as issued on behalf of" -- I have Mr. Hudson dealt with this company, and the figures of "net profit" are taken from that source. Then there is "interest on bonds and loans." Then "income tax." Then I arrive at the "actual net profit." Then the "capital employed in manufacturing operations." Then "investments." Then "total capital investment (exclusive of goodwill)." Then I take off from that "bonds issued" and I get the shareholders equity. Now, that is all the shareholders of both classes.

MR. MORLEY: Which statement are you referring to?

MR. MALLOCK: Statement 1, marked in the right hand corner at the top. So that the actual net profit on the shareholders equity, eliminating the goodwill, in that first year is 8.2%, and the percentages are given all the way down. The lowest is in 1901 and was 4.7%, and the average was one-half in 1.6.

MR. MORLEY: Because goodwill was charged off the profits and there is no goodwill among the [illegible]

except a dollar.

THE COMMISSIONER: Not in these years.

MR. McRUER: No, but it had been charged off the profits.

THE COMMISSIONER: Before that?

MR. McRUER: What do you mean when you eliminate good will in these years?

MR. KELLOCK: It had been charged off the profits and insofar as profits were not there in actual fact, I think you will find that insofar as there was any goodwill it was not represented by an actual asset - in other words it had not been written off to profits, it is deducted.

MR. McRUER: It was all written off.

MR. KELLOCK: All right, then you can just eliminate that phrase.

THE COMMISSIONER: "Exclusive of goodwill" does not mean anything there.

MR.KELLOCK: In the case of this company that is not correct.

THE COMMISSIONER: I understand the good will was all paid off from the profits of previous years.

MR. KELLOCK: I think that is correct. My friend says it is correct and I cannot challenge it for the moment. In other words, if that is not the fact any good will not so written off has been taken out of those figures, and that is the result.

THE COMMISSIONER: Otherwise if you leave them there

yearly profits.

THE CHAIRMAN: Had in those years.

Mr. Rayner: No, but is not charged out the profits.

THE CHAIRMAN: Subject-matter?

Mr. Kemble: What do you mean when you eliminate good will in those years?

Mr. Kellock: It has been charged off the profits and income as profits were not there in actual fact. I think you will find that income as there was only possibly it was not represented by an actual asset - in other words it was not cash written off to profits, it is cash not.

Mr. Kemble: It was all written off.

Mr. Kellock: All right, then you mean just eliminate that income.

THE CHAIRMAN: Exclusive of possibly does mean anything there.

Mr. Kellock: In the case of this company that is not correct.

THE CHAIRMAN: I understand the good will was all paid off from the profits of previous years.

Mr. Kellock: I think that is correct. My friend says it is correct and I cannot challenge it for the moment. In other words, if that is not the fact my good will was in existence all the time from the year 1919 to 1926, but that is the point.

THE CHAIRMAN: Whether it was there then.

MR. KELLOCK: Your lordship can eliminate those words. I come back to where I was reading:

"Similarly, in the case of the Monarch Knitting Company Limited, Commission counsel on pages 9062 to 9074 of the evidence contrasts the profits of the company with the original capital invested. Actually during the ten years 1926 to 1935 inclusive the average annual net profit was only 3.07% of the book value of the shareholders equity, and in the most profitable year was only 7.1%."

and the following statement, my lord, shows the situation - that is statement 2. I show the revenue applicable to common stock equity that I got from the exhibit and where the preference dividend was paid I add that and I show the net profit available to all shareholders, and then the total capital employed, less bank loans, and I get the book value of shareholders' equity and percentage of net profits to the book value of shareholders' equity are the percentages set out, the average being 3% over the period of years, the lowest being 0.8% in 1932. In 1930 your lordship sees there was a loss there of ---

THE COMMISSIONER: That x means a loss?

MR. KELLOCK: Yes. There is a notation down at the foot. If it were in red it would be better but I could not print it in red. So that there was a loss in 1930. It was 0.8% in 1932. In 1931

Similarly, in the case of the Waterson Knitting Company Limited, Commission counsel on pages 9825 to 9874 of the evidence summarizes the yield of the company with the original capital invested. Actually during the ten years 1920 to 1929 inclusive the average annual net profit was only 5.07% of the book value of the shareholders equity and in the most profitable year was only 7.1%."

On the following statement, my lord, shows the situation - that is statement 2. I show the revenue applicable to common stock equity that I get from the statist and where the preference dividend was paid I add that and I show the net profit available to all shareholders, and then the total capital employed, less bank loans, and I get the book value of shareholders' equity and percentage of net profit to the book value of shareholders' equity are the percentages set out, the average being 3% over the period of years, the lowest being 0.8% in 1920. In 1930 your lordship asks that a bank loan of ——

MR. LAMONT: Only a month or two.

MR. BELLAMY: Yes. There is a monthly book at the start. If it were in red it would be better but I would not point it in red. We don't have one a year in 1930. It was used in 1929. In 1931

it was 1% and the other percentages are shown there and the most the company ever made was in 1928 when they made 7.1%. So that the average is 3%, and I come back to paragraph 18.

THE COMMISSIONER: I suppose in these cases, especially in that one, you are getting back to Mr. McRuer's other explanation - capitalization.

MR. McRUER: In Penman's too, because all those shareholders' equity is watered stock.

THE COMMISSIONER: What happened to this one around the year 1912 or thereabouts? However, we can argue that later.

MR. KELLOCK: I do object to my friend using the words "watered stock".

THE COMMISSIONER: Well, this is premature; you can argue it later.

MR. KELLOCK: Paragraph 18: "If ac ompany paid out all of its profits eas dividends and then obtained the additional capital which it required from a sale of bonds or shares for cash, there is no doubt that the additional cash invested would be included as capital and when a company adopts the more conservative method of notpaying out its profits in the form of dividends but leaves them in the business, this also becomes capital."

With regard to "normal profits":

"While an effort has been made by the

it was 1s and the other personages are shown there and the work the company over made was in 1924 when they made 7.1%. So that the average is 8%, and I come back to paragraph 18.

The CHAIRMAN: I suppose in view cause, especially in that era, you are getting back to Mr. Adams's other explanation - capitalization.

Mr. McGibbon: Is Gowan's too, because all those shareholders' equity is watered asset.

The CHAIRMAN: Was responsed to this one around the year 1912 or thereabouts? However, we can argue that later.

Mr. Edwards: I do object to my friend using the word "watered asset".

The CHAIRMAN: Well, this is preliminary, you can argue it later.

Mr. Edwards: "If a company with out all of its profits was dividends and then from a sale of bonds or shares for cash, there is no doubt that the additional sum invested would be included as capital and then a company cut its profits in the form of dividends but leaves them in the business, this also becomes capital."

Mr. Edwards: "While an effort has been made by the

commission auditor to show profits of various divisions of the textile industry,"

THE COMMISSIONER: There should be a comma there.

MR. KELLOCK: Yes, there should be a comma after "industry".

"...no attempt was made to show what might be considered a normal profit in this industry. Net profits it is submitted are not just 'wind-falls' which lucky shareholders obtain. They might better be called a return to the investor, for his money might have been invested in Government bonds without risk instead of..."

THE COMMISSIONER: Is that there "without risk"?

MR. KELLOCK: It was not, I am afraid, even 100% at the time I wrote that.

MR. McRUER: Depends on what Government.

MR. KELLOCK: Since I wrote that it is truer now than it was.

MR. McRUER: That government bonds were without risk?

MR. KELLOCK: In the case of one Province.

"They might better be called a return to the investor, for his money might have been invested in Government bonds without risk instead of in the Textile industry. If he had invested in Government bonds,"

I should say "Some Government bonds", my lord.

commission neither to some profits of various divisions of the textile industry."

THE CHAIRMAN: There should be a common front.

MR. KEFFORD: Yes, there should be a common effort "industry".

"...the policy was to have everything be established a normal yearly profits industry. Not profits it is published are not just "pure-profits" which cause discontent which. They might better be called a return to the investor, for his money might have been invested in Government bonds without risk instead of..."

MR. FERGUSON: If was not, I am afraid, even 1941 at the time I wrote that.

MR. KEFFORD: Depends on what government.

MR. FERGUSON: Since I wrote that it is truer now than it was.

MR. KEFFORD: That government bonds were without risk.

MR. KNOWLCON: In the case of one Province.

"They might better be called a return to the investor, for his money might have been invested in Government bonds without risk instead of the Textile industry. If he had invested in Government bonds,"

I quote my "Some Estimating Course", on 1941.

"...he would have been assured of a fixed return and the return of the principal sum at the end of the period. Instead, this money was invested in buildings and plant - many of which would be of value only to a textile company - and used to provide the working capital needed to purchase raw materials and to meet payrolls until such time as cash could be obtained from the sale of the finished product. There is a risk attached to any such investment. To a greater or less extent, the money so invested could not be realised upon in full in the event of liquidation and the safety of the investment is largely dependant upon the ability of the textile company to continue operating at a profit."

"Obviously, the investor is entitled to some return on this money. How great should that return be? No attempt has been made to establish this before the Commission and not having any standard available, there is no basis with which to compare the actual earnings of the textile companies.

On page 12457 of the evidence the Commission ~~Mastire-s~~ auditor stated that he would not pass an opinion as to whether one of the Company's results indicated an excessive rate of earnings, explaining that he had not 'made any real investigation of the business as to its hazards, and that

"...so could more been amassed of a fixed return and the return of the principal was at the end of the period. Instead, this money was invested in buildings and plant - many of which would be of value only to a textile company - and used to vide the working capital needed to purchase raw materials and to meet payrolls until such time as cash could be obtained from the sale of the finished product. There is a risk attached to any such investment. To a greater or lesser extent, the money so invested could not be realized upon in full in the event of liquidation and the safety of the investment is largely dependent upon the ability of the textile company to continue operating at a profit."

Obviously, the investor is entitled to some return on his money. The great should this return but no attempt has been made to establish this before the Commission and not having any standard available, there is no basis upon which to compare the actual earnings of the Dominion Woollens.

On page 1247 of the evidence the Commission auditor states that he could not form an opinion as to whether one of the Company's results indicated an excessive rate of earnings, explaining that he had not made any real investigation of the accounts as the statement, but

sort of thing.' Yet surely such a consideration is prerequisite to any study of the profits of the textile or any other industry.

It should be noted that the tendency of companies to reinvest a substantial portion of their profits is evident in the case of the Canadian Textile Industry. This is shown by the following summary covering the representative companies for the ten years 1926 to 1935 inclusive - submitted by the Commission auditor."

I have set out the exhibits, my lord, and the "Division" there and shown net profits after provision for bond interest and income tax, and dividends paid. That shows then, deducting the one from the other, the amount of profits left in the business, and in the cotton industry it is 1.7%. In artificial silk it is 54.1%. In Real Silk it is 46.9%. Hosiery 44.8%. Knit Goods - they have drawn on their surplus to a fraction of a percent there - .6. IN the case of woollens, 55.5%. Papermakers' felt 63.1%. Carpets 40.1% and other branches 1.6%, and I do submit that that shows howthe industry has developed its business out of the revenue from the business, to build it up and make it a strong industry:

"The amount of profits not paid out as dividends but added to surplus account was reinvested in the industry - to provide the additional plant and working capital needed by growing

sort of thing." Yet surely such a consideration is prerequisite to any study of the profits of the textile or any other industry.

It should be noted that the tendency of companies to reinvest a substantial portion of their profits is evident in the case of the Dominion Textile Industry. This is seen by the following summary covering the representative companies for the past years from as item included submitted by the Commission auditor."

I have set out the exhibits, my lord, and the "total" there was account net profits after providing for bond interest and income tax, and dividends paid. That shows then, deducting the one from the other, the amount of profits left in the business, and in the cotton industry it is 1.7%. In artificial silk it is 34.1%. In wool silk it is 44.9%. Hosiery 44.8%. Knit goods - they have drawn on their surplus to a fraction of a percent there - .6. In the case of knitting, 4.4%. Underwear 7.1; 31.4. Corsets 40.1% and other branches 1.8%, and I do submit that that shows how the industry has developed its business out of the revenue from the business, to build it up and make it a strong industry:

"The amount of profits not paid out as dividends but added to surplus account was reinvested in the industry - in plants, in additional plant and working capital within it during

businesses. It will be noted that in the case of the newer industries (Silk and Artificial Silk) the proportion retained in the business is much larger than in the case of the older established ones, (such as Cotton and Knit Goods)."

THE COMMISSIONER: Perhaps, with the aid of your figures we have discovered that long-looked for thing - the industry which is no longer an infant industry.

MR. KELLOCK: I would not contend it is an infant industry.

"A consideration of profits without regard to whether it is possible to return these profits to the shareholders in total or whether a substantial portion had to be retained to take care of the increasing business, is extremely misleading.

The only profits which are available to an investor in the share capital of a company are the net profits after all charges including corporation income tax. These net profits are set out in Exhibit 1222 and were filed by the Commission auditor at our request. A comparison of these profits withthe shareholders' investment in the various groups follows."

And I am going to refer your lordship to that just in a moment.

"A comparison of net profits of all companies after bond interest and income taxes to book value of

business. It will be noted that in the case of the newer industries (Silk and artificial silk) the proportion retained in the business is much larger than in the case of the older established ones, (such as Cotton and knit goods)."

THE CHAIRMAN: Perhaps, with the aid of your figures we have discovered that long-looked for thing - the industry which is no longer an infant industry.

MR. HILLSON: I would not say that it is an infant industry.

"A consideration of profits without regard to whether it is possible to return those profits to the shareholders in total or whether a substantial portion had to be retained to take care of the increasing business, is extremely misleading.

The only profits which are available to an investor in the share capital of a company are the net profits after all charges including corporation income tax. These net profits are set out in exhibit 1888 and were filed by the chartered auditor at our request. A comparison of these profits with those recommended by the various groups follows."

And I am going to refer your lordship to that page in a moment.

"A computation of net profits of all companies after paying taxes at the income tax rate

shareholders' equity, as represented by Preferred and Common shares, head office accounts, surplus and free reserves (less investment in and advances to subsidiary companies in the same division.)

Unless that is taken out there is a duplication.

Now, I show average profit 1926 to 1935, inclusive, and the average profit for the best and poorest year respectively. Now, in the Cotton group the average profits over the period are 4.4%. The best year 6.7% and the poorest year 1.2%. In knit goods the average profit for the period is 2.5%, the best year 7.1% and the poorest year they had a loss of 1.8%.

MR. McRUER: What are these on? On the outstanding capital?

MR. KELLOCK: If you will read the heading at the top you will see.

MR. McRUER: On the shareholders' equity together, that is, on the outstanding capital - preferred and common.

MR. KELLOCK: Outstanding capital and surplus.

MR. McRUER: Including write-up of goodwill.

MR. KELLOCK: If the write-up is included in the bookvalue, yes.

MR. McRUER: If goodwill is included in the book value to make up the issue of capital stock, then it is included.

MR. KELLOCK: It is the book value of the assets

shareholders' equity, as represented by retained and General share, book office accounts, surplus and free reserves (less investment in and advances to subsidiary companies in the same division.)

Unless that is taken out there is a duplication.

Now, I show average profit less to 1958, inclusive, and the average profit for the best and poorest year respectively. Now, in the bottom group the average profits over the period are 4.4%. The best year 8.7% and the poorest year 1.8%. In fact gross the average profit for the period is 2.8%, the best year 7.1% and the poorest year they had a loss of 1.2%.

Mr. [illegible]: What are those our - on the out-standing equity

Mr. [illegible]: If you will read the heading at the top you will see.

Mr. [illegible]: On the shareholders' equity basis, that is, on the outstanding capital - preferred and common.

Mr. [illegible]: Outstanding capital and surplus.

Mr. [illegible]: Including write-up of goodwill.

Mr. [illegible]: If the write-up is included in the book value, yes.

Mr. [illegible]: If goodwill is included in the book value to make up the issue of capital stock, then it is included.

Mr. [illegible]: It is the book value of the amount

after deducting liabilities. In other words, it is shareholders' equity.

MR. McRUER: Yes, but goodwill included, if it is there.

MR. KELLOCK: Yes, if it is there and I also show what the difference is when you eliminate good-will if my friend will just wait a moment.

In the case of Hosiery, for the period it is8.9%. It is 14.8% for the best year and 5%8% for the poorest. Paper-makers' felts, the av rage is 8.8%, the best year 13.9, and the poorest year 5.1. Carpets, the average is 4.3 for the period. The best year is 8.1 and the poorest year .8. Woollens, the average for the period is 2.7%, the best year 4.8% and the poorest year a loss of 1.9%. Artificial silk, the average for the period is 8.3%, the best year 22.6% and the poorest year 4.5%.

"It is submitted that it is surely apparent from the above figures that the return to this industry has been anything but excessive. While the total profits for all of the above companies for the 10 years amount to slightly more than $60,000,000. This represents an average annual return of only 4.8% on the net assets employed."

And there is a statement attached which sets out the detail for each year in each group, and I do not know whether your lordship wants me ---

MR. McRUER: Has the capital varied from year to

after deducting liabilities. In other words, it is shareholders' equity.

MR. KEND[illegible]: Yes, but goodwill included, if it is there.

MR. MILLER: Yes, if it is there and I also know what the difference is when you eliminate goodwill [illegible].

In the case of Delaney, for the period it has, it is 14.8% for the best year and 3.0% for the poorest. Paper-makers' felts, the av rage is 6.8%, the best year 18.7%, and the poorest year 1.1%. [illegible] the average is 4.3 for the period. The best year is 6.1 and the poorest year [illegible]. Woolens, the average for the period is 3.7%, the best year 6.9% and the poorest year a loss of 1.7%. Artificial silk, the average for the period is 8.0%, the best year 22.8% and the poorest year 4.3%.

"It is submitted that it is merely a statement from the above figures that the return to this industry has been anything but excessive. While the total profits for all of the above companies for the 10 years amount to slightly more than [illegible], [illegible]. This represents an average annual return of only 4.3, on the net assets employed."

And there is a statement attached which sets out the details for each year in each group, and I do not know whether your Lordship wants me ---

MR. [illegible]: Has the capital varied from year to

year or do you just add them up and divide by the number of years?

MR. KELLOCK: If my friend will look at the statement I am referring to - statement 3, page 1, the detail is given and I have summarized it on the pages of my brief. It showsthe complete story for every year for the reporting companies, divided by groups.

MR. McRUER: Well, that is at the end of the year? Average it for the year or how is the average arrived at?

MR. KELLOCK: The average of what - the profits? The total of the year is taken and averaged as against the capital.

THE COMMISSIONER: You mean the total for each year?

MR. KELLOCK: Yes, it is set out there in the statement, at the end of each year and the story for each year is given.

MR. McRUER: Is not that just what you are complaining we did.

MR. KELLOCK: No.

THE COMMISSIONER: Because your figures are not in relation to the same capital, the same as Mr. Howson's.

MR. KELLOCK: No, and my capital does not vary the same as Mr. Howson's capital, does not fluctuate.

year or do you just add them up and divide by the number of years?

MR. KOLODNY: If my friend will look at the statement I am referring to - statement 3, page 1, the detail is given and I have summarized it on the page of my brief. It amounts to complete parity for every year for the previous accounting, totaling [illegible].

MR. MORTON: Well, that is at the end of the year so does it for the year or now is the average arrived at?

MR. KOLODNY: The average of what - the profits? The total of the year is taken and averaged as against the capital.

THE COMMISSIONER: You mean the total for each year?

MR. KOLODNY: Yes, it is set out there in the statement, at the end of each year and the story for each year is given.

MR. MORTON: Is not that just what you are explaining we did.

MR. [illegible]: No.

MR. [illegible]: [illegible] in relation to the same capital, the same as Mr. [illegible].

MR. KOLODNY: No, and my capital does not vary the same as Mr. Jameson's capital, does not fluctuate.

Then, my lord, I come back to page 11, and I deal with the situation if you eliminate good will, patents and so on, and I say--

" While the above figures include in the book value of the shareholders' equity any shares issued against Goodwill, Patents, &c., it is estimated that the elimination of this would increase the average annual return by only 0.2%.

In certain individual cases, more profitable earnings are shown than these averages, but it is the profits of the industry as a whole or of any divisison of the industry that tells the story and the story in this case is that the textile industry in Canada has been relatively unprofitable. Also the mills reported on represents approximately two thirds of the industry and as the list includes the incorporated companies and all the larger mills, it would appear to be fair to assume that the figures, generally speaking, represent the more successful companies.

Figures have been presented to show the net profits of the company as a percentage to sales. The significance of this percentage is to show what part of the mill customers' dollar is available as a return to the investor. Variations from year to year or as between different plants or different groups are not necessarily indicative of a more or less profitable return to the inves-

Then, my lord, I come next to page 11, and I deal with the situation if you eliminate cost mill, p-tests and so on, and I say--

" While the above figures include in the book value of the shareholders' equity any excess Canal Service Credit, totaling, i.e., it is estimated that the elimination of this round increases the average annual return by only 0.2%.

In one main individual cases, more profitable sections are shown than these averages, but if the profits of the industry as a whole or of any division of the industry that tells the story and the story in this case is that the textile industry in Canada has been relatively unprofitable. Also the mills reported on represent approximately two thirds of the industry and as the list includes the incorporated companies and all the larger mills, it would appear to be fair to assume that the figures, generally speaking, represent the more successful companies.

Figures have been presented to show the net profits of the company as a percentage to sales. The significance of this percentage is to show what net profit the company realized (after interest) as a return to the investor. Variations from year to year or as between different plants or different groups are not necessarily indicative of a more or less profitable return to the inves-

"tor, for from his standpoint it is the ratio of profits to invested capital that matters. Obviously, a company that turns over its capital several times a year (that is, where sales are several times the amount of the invested capital) can obtain a fair return on the capital invested from a very much smaller profit per dollar of sales than in the case of a company where capital is turned over less frequently. It will be noted throughout the various statements submitted by the Commission auditor that such variations do occur in the Textile Industry. Thus, in the Hosiery group in 1935 sales amounted to 163.9% of the capital employed in the industry, whereas in the Paper Makers' Felt division, the ratio of sales to capital employed in the industry was only 78.4%:

(1) The average net profit after deducting bond interest and income taxes, and

(2) The dividends paid - both as a percentage of sales - are set out below for all the representative companies in each of the main divisions for the ten years 1926 to 1935 inclusive -

Exhibit No		Average net profit Percentage to Sales.	Average Dividends Percentage to Sales
998	Cottons,	5.6%	5.5%
1082	Knit Goods	2.3	2.3
1017	Woollens	4.9	2.2
1155	Hosiery	7.9	4.4
1200	Artificial Silk	17.7	8.1

"tor, for from his statements it is the ratio of profits to invested capital that matters. Obviously, a company that turns over its capital several times a year (that is, whose sales are several times the amount of the invested capital) can earn a fair return on the capital invested from a very much smaller profit per dollar of sales than in the case of a company whose capital is turned over less frequently. It will be noticed throughout the various statements submitted by the Commission auditor that such variations do occur in the textile industry. Thus, in the hosiery group in 1920 sales amounted to 1[illegible] of the capital employed in the industry, whereas in the upper knows' fast division, the ratio of sales to capital employed in the industry was only 7[illegible].

(i) The average net profit after deducting bond interest and income tax, and

(ii) The dividends paid - both as a percentage of sales - are set forth for all the companies active companies in each of the main divisions for the ten years 1920 to 1929 inclusive -

Company.	Percentage to sales.	
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

916	Real Silk	6.0	3.2
1191	Carpets	7.2	4.3
1069	Paper Makers'Felts	16.1	5.9

From this it will be seen"--

THE COMMISSIONER: Just to give me an example, Mr. Kellock; tell me, in the case of hosiery, what accounts for the difference between net profit and the dividends? What became of the 3½%?

MR. KELLOCK: Left in the business, my lord, and used. That corresponds, my lord, to the table where I give it in dollars and cents at page 10, at the top of page 10.

THE COMMISSIONER: Where you have given it?

MR. KELLOCK: Yes, dollars and cents. Your lordship sees how much was paid out in dividends and how much left in. Then, comparing wages to profits --

" A summary of wages paid, profits earned and income taxes provided for through the years 1926 to 1935 by those companies which are dealt with in the reports of the Commission auditor filed as Exhibits No. 1259 to 1265, inclusive, is set out below"--

and I show the exhibit number, and the division, and the mill wages paid include mill salaries, and the net profit after bond interest and income tax, and the provision for income tax. Now, in the case of cottons the net profit after bond interest and income tax was $23,270,000. Mill wages paid were $106,203,000 and income tax either paid or provided for $2,635,000.

916	Neal Mill	8.0	5.9
1100	Lumpkin	7.2	4.4
1050	Upper Bakers Falls 10.1		8.9

from this it will be seen"--

THE CHAIRMAN: Just to give me an example, Mr. Hallock; tell me, in the case of Lumpkin, what accounts for the difference between net profit and the dividends? What became of the 5%?

MR. HALLOCK: Left in the business, my lord, and used. That corresponds, my lord, to the table who I give it in dollars and cents at page 10, at the top of page 10.

THE CHAIRMAN: Where you have given it?

MR. HALLOCK: Yes, Lumpkin and Neal. Then I only see how much was paid out in dividends and how much left in.

" A summary of wages paid, profits earned and income taxes provided for through the years 1905 to 1928 by those companies which are dealt with in the reports of the commission auditor filed as Exhibits No. 1800 to 1805, inclusive, is set out below"--

and I show the exhibit number, and the division, and the mill wages paid includes mill salaries, and the net profit after bond interest and income tax, and the provision for income tax. Now, in the case of Lumpkin the net profit after bond interest and income tax was $48,270,000. Mill wages paid were $103,000, but income tax alone amounted to $48,000,000.

In knit goods the wages were $73,549,000 and the net profit $6,023,000 and provision for income tax $959,000, Woollens, the wages were $41,729,000; net profit $4,242,000 and income tax $828,000. Hosiery, wages were $26,810,000, net profit $5,673,000 and income tax $808,000. Artificial silk, wages $23,305,000, net profit $12,453,000 and income tax $1,802,000. Real silk, wages $17,574,000, net profit $4,873,000 and income tax $646,000. Carpets, wages $7,158,000, net profit $2,202,000 and income tax $235,000. Paper Makers' Felts, wages $3,550,000, net profit $4,096,000 and income tax $504,000, the total wages paid being $239,882,000, net profits $62,835,000 and income tax paid or provided for $8,422,000.

" It will be observed from the above that the net profit available to shareholders is only about 20% of the total wage bill. Accordingly, a 10% increase in the amount of wages paid would result in a 50% decrease in the amount of profits available to shareholders"--

MR. McRUER: That is providing they did not charge the consumers any more.

MR. KELLOCK: If my friend will let me read --

"--unless of course the wage increase could be passed on to the consumer in the form of increased sale prices."

My friend says I must reduce my prices.

MR. McRUER: You have not done that this last year.

In Kali, gross the wages were $75,541,000 and the net profit $6,022,000 and provision for income tax $328,000. Goldfine, the wages were $42,300,100; net profit $1,040,000 and income tax $[illegible].

Moisery, wages were $6,210,000, net profit $5,242,000 and income tax $[illegible]. Trilateral oil, wages $32,508,000, net profit $11,495,000 and income tax $1,800,000. Ideal oil, wages $17,974,000, net profit $4,470,000 and income tax $[illegible]. Wages $7,180,000, net profit $2,[illegible],000 and income tax $[illegible]. Peter Moore' Poite, wages $[illegible],[illegible],000, net profit $4,[illegible],000 and income tax $[illegible]. The total wages paid being $[illegible],[illegible],000, net profits $[illegible],000,000 and income tax paid or provided for $[illegible],000,000.

It will be observed from the above that the net profit available to shareholders is only about 20% of the total wage bill. Accordingly a 10% increase in the amount of wages paid would result in a 80% decrease in the amount of profit available to shareholders.

Mr. Mortimer: That is probably why did not show the commerce any more.

Mr. Fielden: If my friend will let me read -- "--ulose of course the wage increase could be passed on to the consumer in the form of increased prices."

My friend says I must reduce my prices.

Mr. Mortimer: You have not done that this last y

They have gone up.

MR. ERLICK: "The ratio of profits to wages varies considerably between the different groups. Naturally, the increased mechanization of an industry will result in a reduction of the ratio of mill wages paid to the total cost. This in turn would result in the net profits appearing as a larger percentage of wages paid if the profits remain the same proportion of the selling price.

It should be remembered however, that the mill wages shown for any mill or division do not represent the total amount paid to Canadian workmen as a result of the existence of that mill or division. The buildings and part of the machinery and equipment used represent wages paid to countless other Canadians. This does not appear in the wage bill of the company for, to the company, it is part of the cost of their capital assets, to be written off over a period of years. But to the country as a whole it represents wages paid to Canadians.

Similarly, fuel, repair parts and other supplies, incidental to manufacture and, in certain cases, raw materials also contribute annually to the total Canadian wage bill, while included in selling, office and administration expenses are still other payments which directly or indirectly provide salaries or wages to Canadians," who are the consumers.

They have done so.

Mr. [illegible]: The ratio of profits to wages varies considerably between the different groups.

Naturally, the increased mechanization of an industry will result in a reduction of the ratio of mill wages paid to the total cost. This in turn would result in the net profits representing a larger percentage of wages paid if the profit remain the same proportion of the selling price.

It should be remembered however, that the mill wages shown for any mill or division do not represent the total amount paid to Canadian workmen as a result of the existence of that mill or division. The buildings are part of the machinery and equipment used represent wages paid to Canadians other Canadians. This does not come in the wage bill of the company for, to the company, it is part of the cost of their capital assets, to be written off over a period of years but to the country as a whole it represents wages paid to Canadians.

Building, fuel, repair parts and other supplies, incidental to manufacture and, in certain cases, raw materials also contribute annually to the total Canadian wage bill. Mills included in milling, office and merchandising expenses are still other payments which directly or indirectly provide salaries or wages to Canadians, who are the consumers.

" These same companies during the years 1926 to 1935 inclusive provided for income taxes an amount of $8,422,416.15. In addition to this, sales tax, customs duties and excise tax on imported raw materials and machinery were paid to the Dominion Government, corporation and income taxes to the Provincial Governments, and real estate and business taxes to the municipalities in which the plants were located.

The companies whose reports are filed with the commission and dealt with in Exhibits 1214 to 1221 inclusive show approximately 40,000 employees in 1935, whereas in that year the total number employed in the primary textile industry was in excess of 60,000. Accordingly, using employment as a measure, the proportion of the industry covered by the above exhibits is 66 2/3%."

THE COMMISSIONER: Well, I think we have had enough for to-day.

MR. KELLOCK: Very well, my lord.

-- The Commission adjourned at 4.55 p.m. to resume at 10.30 a.m., Thursday, February 25, 1937.

Value and Duty on Imports for the year 1938 to 1939 inclusive provided for income taxes an amount of $3,422,816.15. In addition to this, sales tax, customs duties and excise tax on imported raw materials and machinery were paid to the Dominion Government, corporation and income taxes to the provincial Governments, and real estate and business taxes on the municipalities in which the plants were located.

The companies whose reports are filed with the commission and dealt with in exhibits 1214 to 1221 inclusive show approximately 40,000 equal years in 1938, whereas in that year the total number employed in the primary textile industry was in excess of 50,000. Accordingly, using employment as a measure, the proportion of the industry covered by the above exhibits is 1-4/5th.

THE COMMISSIONER: Well, I think we have had enough for to-day.

MR. FRANKLIN: Very well, my lord.

-- The Commission adjourned at 4.30 p.m. to resume at 10.00 a.m., Thursday, February 23, 1939.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A.TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND EIGHTEENTH DAY

(February 25th,1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

--

A.S. Whiteley, Secretary,

--

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company,
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J.H. Hebert,	For Me E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

--- oOo ---

E.C. Norman, K.C. and E. Bourgeard, K.C.	Commission Counsel.
R.L. Kellock, K.C.	For Primary Textile Industries.
C.G. Heard, K.C. Alex Geoffrion, K.C. and J.J. Salmanovitch.	For Dominion Textile Company.
J.G. Ahern, K.C.	For Dominion Textile Ltd.
A.S. Pringle, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.W. Anderson, K.C.	For Canadian Cottons.
Chas. Tremblay, K.C. and J.M. Bennett.	For McD. Blue Co. Ltd.
Francois Lajoie, K.C.	For Kahnsaw Cotton Co.

Ottawa, Ontario,
February 25, 1937.

-- The Commission resumed at 10.20 A.M.

- - - -

THE COMMISSIONER: Very well, Mr. Kellock.

MR. McRUER: My lord, before Mr. Kellock continues his argument I have a letter which I think should be drawn to the attention of the Commission. Your lordship will recollect that when I was presenting my argument I mentioned the organizations of the manufacturers in the textile industry and generally, and your lordship asked me was there any organization of importers. We had inquiries made, and I now have a letter from the Canadian Importers and Traders Association in reply.

THE COMMISSIONER: What do they call it ?

MR. McRUER: The Canadian Importers and Traders Association.

THE COMMISSIONER: What is the date of the letter ?

MR. McRUER: It is dated February 17, 1937, and is addressed to the Textile Commission. It reads as follows --

THE COMMISSIONER: Where is it from ?

MR. McRUER: It is from Toronto. Their address is 117 Wellington Street West, Toronto. It reads:

[illegible]

[illegible], [illegible]

-- The Commission resumed at 10.40 a.m.

- - - -

[illegible]: Very well, Mr. Barlook.

Mr. [illegible]: My lord, before Mr. [illegible] continues his argument I have a letter which I think should be drawn to the attention of the Commission. [illegible] which [illegible] when I was presenting my arguments I mentioned the organizations of the manufacturers in the textile industry and generally, and your lordship asked me was there any organization of importers. We had inquiries made, and I now have a letter from the Canadian Importers and Traders Association in reply.

The Commissioner: What do they call it?

Mr. [illegible]: The Canadian Importers and Traders Association.

The Commissioner: What is the date of the letter?

Mr. [illegible]: It is dated February 17, 1947, and is addressed to the Textile Commission. It reads as follows --

The Commissioner: Where is it from?

Mr. [illegible]: It is from Toronto. Their address is [illegible] Building, Bay Street, Toronto.

It [illegible]

"As requested we send you, herewith, some information as to The Canadian Importers and Traders Association, Inc.,

The present association was formed in Toronto in June 1922 by a small group of importers. Their object being to attempt to improve the lot of the Canadian import trade which had found its business cut almost to nothing because of increased duties, the imposition of high valuations for duty purposes and other vexatious and unpredictable rules and regulations by the Customs authorities. In fact by this time a number of importers had been entirely forced out of business.

The Association gained strength very slowly and we had great difficulty in attracting members. This was due to several reasons, Many of the importers were so discouraged they felt nothing could be done. Others found themselves in such financial straits that the small fee asked was too much for them and at this time a persistent report was circulated that the Association was purely a political organization, formed for the purpose of embarrassing the government. This was not so.

Later in the year the Association applied for Dominion Incorporation but this was refused, and we have since been advised that it was largely because of a letter from the Department of Trad

As requested we send you, herewith, some information as to the Canadian Lumbermen and Prairie Association, Inc.,

The present organization was formed in Toronto in June last by a small group of importers. Their object being to attempt to improve the lot of the Canadian lumber trade which had found its business set adrift to nothing because of increased duties, the imposition of high valuations for duty purposes and other vexatious and unprecedentable rules and regulations by the Customs authorities. In fact by this time a number of importers had been entirely forced out of business.

The Association gained strength very slowly and we had great difficulty in attracting members. This was due to several reasons, many of the importers were so discouraged that they felt nothing could be done. Others issued insolvencies in such financial straits that the small for cashed was too much for them and at this time a persistent report was circulated that the Association was purely a political organization, formed for the purpose of embarrassing the government. This was not so.

Later in the year the Association applied for Dominion Incorporation by Bill and notwithstanding many times been advised that it was being treated, we finally learn the Department of Trade

and Commerce to the Secretary of State objecting to granting incorporation on the grounds that we were an irresponsible body and that in any case the work that we proposed to do was already being taken care of by the various Boards of Trade and Chambers of Commerce. The Association then carried on as a non-corporate body until October of last year when we finally obtained Dominion Incorporation, under the present name.

While the Association numbers among its members some large and important import firms, the percentage of the total number of importers in Canada represented in its ranks, is very small. Our total membership to-day being only one hundred and twenty-two members in good standing; whereas the number of importers in this country must be several thousands.

The Association at present is only able to employ the writer, who is Secretary-Treasurer, on a part time basis.

We are enclosing, herewith, a copy of our By-laws and if there is any further information you desire we would be only too pleased to furnish same.

Yours respectfully,

The CANADIAN IMPORTERS AND TRADERS ASSOCIATION, Inc.,

Alan O. Thorne

Managing Secretary."

and Commerce to the secretary of state objecting to granting incorporation on the grounds that we were an irresponsible body and that in fact were the more that we proposed to do was already being taken care of by the various boards of trade and Chambers of Commerce. The application then carried on as a non-corporate body until October of last year when we finally obtained Ontario Incorporation, under the present name.

While the population numbers seem large we are some large and important import lines. The presence of the total number of importers in Canada represented in the room, is very small. The total membership so-far being only one hundred and twenty-two members in good standing; whereas the number of importers in this country must be several thousands.

The association at present is only able to employ the writer, who is secretary-treasurer, on a part time basis.

We are enclosing herewith, a copy of our by-laws and if there is any information your desire we would be only too pleased to furnish same.

Yours respectfully,

The Canadian Importers Association, Inc.,

Alex. Fraser

Executive Secretary.

I will file this letter with the by-laws.

THE COMMISSIONER: You have the by-laws ?

MR. McRUER: The by-laws are attached to the letter.

THE COMMISSIONER: That will be Exhibit 1241.

EXHIBIT 1241: Letter and By-laws of the Canadian Importers and Traders Association, Incorporated, Toronto.

THE COMMISSIONER: Have you anything to say about the matter, Mr. McRuer ?

MR. McRUER: No, my lord. I just draw attention to one or two things in connection with it, first, to what a weak organization it seems to be compared with the several other organizations that have been formed for the purpose of promoting the other interests; also it seems an extraordinary thing that they should be refused the right to incorporate. I think that is amazing in view of the special act of parliament that incorporates one of the other organizations whose interests are contrary to those of this association.

ARGUMENT BY MR. KELLOCK (resumed)

MR. KELLOCK: I should like to take a moment or two, my lord, to compare what the income would have been to the shareholders of the companies to which I referred yesterday, had they invested their money in, say, Ontario government bonds instead of in the textile companies in which they actually had their money invested.

(1400)

I will file this letter with the by-laws.

THE CHAIRMAN: You have the by-laws ?

M. MOORE: The by-laws are attached to the letter.

THE CHAIRMAN: Have you anything to say about the matter, Mr. Moore ?

M. MOORE: No, my lord. I just draw attention to one or two things in connection with it. First, to what a week organization it seems to be compared with the several other organizations that have been formed for the purpose of promoting the other interests; for it seems an extraordinary thing that they should be refused the right to incorporate. I think that is striking in view of the special act of parliament that incorporates one of the other organizations whose objects are nothing in excess of this association.

MR. LAFLEUR: I would like to have a reason given, my lord, to compare what the income would have been to the subscribers of the companies to which I referred yesterday, had they invested their money, say, in the pre-emptive rights issued in the province of Quebec by giving the average net rate, among the invested.

MR. [illegible]: You mean the original moneys invested or the moneys earned --

MR. KELLOCK: I am not talking about the original moneys invested at all.

THE COMMISSIONER: You mean the profits reinvested in the business ?

MR. KELLOCK: Yes, my lord, the capital figures that I gave your lordship yesterday.

THE COMMISSIONER: You mean, if these had been put some place ~~xx~~ else ?

MR. KELLOCK: If they had been put in Ontario government bonds instead of in the textile industry, this is the return they would have made in the period 1926 to 1934. I am taking these figures from Table 27, from the index of security prices, foreign exchange and other financial factors -- Recent Economic Tendencies in Canada, 1919 to 1934, Bureau of Statistics. I find that the return in 1926 was 4.79.

THE COMMISSIONER: You were speaking of percentages ?

MR. KELLOCK: Yes. In 1926 the return was 4.79 per cent; 1927, 4.54; 1928, 4.43; 1929, 4.9; 1930, 4.71; 1931, 4.63; 1932, 5.21; 1933, 4.68; 1934, 4.11. Now if my arithmetic is right the average for the period is 4.66 per cent, my lord.

There are two things that I should like to compare there in addition to the rate of return. One is that in the case of the investor in bonds, he can get his hands on his capital invested at any time. He can realize on the bond immediately at any time.

MR. [illegible]: You mean the original moneys invested or the moneys earned --

MR. [illegible]: I am not talking about the original moneys invested at all.

THE COMMISSIONER: You mean the profits reinvested in the business ?

MR. [illegible]: Yes, my lord, the capital figures that I gave your lordship yesterday.

THE COMMISSIONER: You mean, if those had been put some place so else ?

MR. [illegible]: If they had been put in Ontario government bonds instead of in the textile industry, this is the return they would have made in the period 1926 to 1936. I am taking these figures from Table 37, from the index of security prices, foreign exchange and other financial factors -- recent economic tendencies in Canada, 1919 to 1934, Bureau of Statistics. I find that the return in 1926 was 4.79.

THE COMMISSIONER: You were speaking of percentages ?

MR. [illegible]: Yes. In 1926 the return was 4.79 per cent; 1927, 4.54; 1928, 4.48; 1929, 4.97; 1930, 4.71; 1931, 4.59; 1932, 5.21; 1933, 4.69; 1934, 4.21. So if my arithmetic is right the average for the period is 4.56 per cent, my lord.

There are two things that I should like to compare there in addition to the rate of return. One is that in the case of the investor in bonds, he [illegible] his capital invested [illegible] at any time, [illegible] likely at any time.

You can say that the shareholder in a textile company can also realize on his investment as a shareholder in the company in the same way, but the reason why the investor in a bond can realize his capital is quite different from the reason why the shareholder in the company can realize on his investment. In the case of the investor in bonds, the purchaser will purchase his bond from the seller because he knows that on the maturity date of the bond, be it long or short, the debtor is going to pay; the bond disappears and the capital is returned in full. But the shareholder in a company such as a textile company can realize on his shares for an entirely different reason, not for the reason that the purchaser knows or expects that the capital is going to be realized by the winding up of the company and the distribution of its assets, but the purchaser of the stock buys in the expectation and the hope that the company is going to continue to carry on and make profits. That, of course, is quite a different thing. There is more uncertainty about it, and it may be affected by a great many considerations that do not apply at all in the case of a bond.

There is another thing, my lord, with regard to the return on the two types of investment. In the case of the investor in government bonds, the percentages of return that I just gave to your lordship went to the bondholder; he gets that return in full. But in the case of the percentages of return on the

You can say that the one shareholder in a textile company can also realize on his investment as a shareholder in the company in the same way, but the reason why the investor in a bond can realize his capital is quite different from the reason why the shareholder in the company can realize on his investment. In the case of the investor in bonds, the purchaser will purchase his bond from the seller because he knows that on the maturity date of the bond, be it long or short, the debtor is going to pay; the bond disappears and the capital is returned in full. But the shareholder in a company such as a textile company can realize on his shares for an entirely different reason, not for the reason that the purchaser knows expects that the capital is going to be realized by the winding up of the company and the distribution of its assets, but the purchaser of the stock buys in the expectation and the hope that the company in going to continue to carry on and make profits. That, of course, is quite a different thing. There is more uncertainty about it, and it may be affected by a great many considerations that do not apply at all in the case of a bond.

There is another thing, my lord, which makes the return on the two types of investment. In the case of the investor in government bonds, the percentages of return that I just gave to your lordship want to the bondholder; he gets that return in full. But in the case of the percentages of return on the

shareholder's investment which are in the tables that I submitted to your lordship yesterday, the shareholder does not get the full return; he has not got the full return at all, and I have given your lordship the details --

THE COMMISSIONER: You say he has not got the full return. What do you mean by the word "return" ? He got some return, didn't he ?

MR. KELLOCK: Oh yes, but he did not get the full return that the company got on its investment because, as your lordship will recall, the return that the company got, was distributed to the shareholders in varying proportions in the varying sections of the industry. For instance, in the Cottons, the shareholder got almost what the company made, but in the real silk industry, if my recollection is right, the company retained about 54 per cent of its profits, and the reason of course why that is done --

THE COMMISSIONER: You are talking now of reinvestment ?

MR. KELLOCK: I am talking now of reinvestment. The money is retained in the business for reinvestment, for the expansion or development of the business or so that there may be a fund on hand to meet the varying conditions, such as a larger demand for goods in better times than in slack times, and the directors do not feel free to distribute all the profits among the shareholders because if they did that, then in times of emergency unforeseen losses might occur and

shareholder's investment which are in the table that I submitted to your lordship yesterday, the prospectus does not get the full return; he has not got a full return at all, and I have given your lordship the details --

THE CHAIRMAN: You say he has not got a full return. What do you mean by the word "return"?

MR. MARLOCK: Oh yes, but he did not get the full return that the company got on its investment because, as your lordship will recall, the return that the company got, was distributed to the shareholders in varying proportions in the varying sections of the industry. For instance, in the cottons, the shareholder got almost what the company made, but in the real silk industry, if my recollection is right, the company retained about 54 per cent of its profits, and the reason of course why that is done --

THE CHAIRMAN: You are talking now of reinvestment?

MR. MARLOCK: I am talking now of reinvestment. The money is retained in the business for reinvestment, for the expansion or development of the business so that there may be a fund on hand to meet the varying conditions, such as a lower demand for goods in better times than in slack times, and the directors do not feel free to distribute all the profits among the shareholders because if they did that, then in times of adversity shareholders would demand and

unless there was a fund retained to take care of these unforeseen factors which may develop in the future, the whole capital structure of the company would be imperilled owing to the risk involved.

My submission to your lordship is that comparing the return in the same period on the two types of investment, it is impossible to say that in that period at least there has been any excessive profit earned by this industry. It gets down to a question of standards. I referred yesterday to the fact that my friend at one stage of these proceedings had thought that the return on a bond formed some basis of comparison to the return which a shareholder in an enterprise like the textile industry might expect.

MR. McRUER: That is very different from what you said yesterday. Here is what you said:

"Mr. Kellock: At one stage of the proceedings my friend voiced the view that that return on capital in an industry, which exceeded what a man would get if he had his money in a bond, was something terrible."

That is a very different statement, and that is what I took exception to yesterday.

MR. KELLOCK: Then I will adopt the language I used yesterday, and I will refer to page 9558 of the evidence where my friend was examing Mr. Robinson of Penmen's Limited, at line 12. I quote+- and what they are discussing is net profits on sales:

unless there was a fund retained to take care of these unforeseen factors which may develop in the future, the whole social structure of the company would be imperilled owing to the risk involved.

My submission to your Lordship is that comparing the return in the same period on the two types of investment, it is impossible to say that in that period at least there has been any excessive profit earned by this industry. It gets down to a question of standards. I referred yesterday to the fact that my friend at one stage of these proceedings had thought that the return on a bond issued was basis of comparison to the return which a manufacturer in an entirely prime line the textile industry might expect.

Mr. Monk: That is very different from what you said yesterday. Here is what you said:

"Mr. Kilgour: At one stage of the proceedings my friend voiced the view that that return on capital in an industry, which exceeded what a man would get if he had his money in a bond, was excessive.

That is a very different statement, and that is what I took exception to yesterday.

Mr. Monk: Then I will adopt the language I used yesterday, and I will refer to page 5258 of the evidence where you stated on behalf of the Government's relation, as like it. I quotation was that they are disposing in net profits on sales:

"Mr. McRuer: Q. All right, 1933 ? A. Sales were $5,005,103. Net profit $277,512, equal to 5.55 per cent on sales; 1934, sales were $5,193,194. Net profits $274,591, equal to 5.29 per cent on sales.

1935, sales were $5,230,935. Net profits $295,366, or 5.64 per cent on sales.

Q. Well, Mr. Robinson -- A. That is not a big margin, is it, of net profit ?

Q. If you are asking me a question, Mr. Robinson, I should say it was an enormous margin, as the result indicated. Now then, just take this: A man invests money in bonds. On his investment these days he gets about 3 per cent per annum, and lucky if he gets that ? A. That is right."

Mr. McRUER: May I just interrupt ? My friend is talking of two different things altogether. One is profit on sales, and the other is return on capital invested in an industry. You may make 2 per cent on sales, and you may make 50 per cent on your capital invested in the industry. They are two different things altogether, and to make the statement that my hon. friend made yesterday, to which I took exception and he said he would back it up by chapter and verse in the evidence -- here was his statement yesterday:

"Mr. Kellock: At one stage of the proceedings my friend voiced the view that that return on capital in an industry, which exceeded what a

"Mr. Monnet: Q. All right, 1916? A. Sales were $5,005,106. Net profit $277,812, equal 5.55 per cent on sales; 1914, sales were $5,198,124. Net profits $174,391, equal to 3.29 per cent on sales.

1913, sales were $4,[illegible], net profits $[illegible], 1.44 per cent on sales.

Q. Well, Mr. Robinson -- A. That is not a big margin, is it, of net profit?

Q. If you are asking me a question, Mr. Robinson, I should say it was an economical margin, as the result indicated. Now then, just take this: A man invests money in bonds. On his investment these days he gets about 5 per cent per annum, and they say if he gets that?

A. That is right."

Mr. McKUEN: May I just interrupt? My friend is talking of two different things altogether. One is profit on sales, and the other is return on capital invested in an industry. You may make 5 per cent on sales, and you may make 50 per cent on your capital invested in the industry. They are two different things altogether, and to make the statement that my hon. friend made yesterday, to which I took exception, is to write an untruth. This is an by another and more in the evidence -- here was his statement yesterday:

"Mr. Kellock: At one stage of the proceedings we taken the view that that return on capital is so inadequate, while unusual and

man would get if he had his money in a bond, was something terrible."

I think my friend ought to withdraw that statement.

MR. KELLOCK: Not at all.

MR. McRUER: Because I was dealing with what the result shows, and that is that the Penman Manufacturing Company had paid large dividends of 5 per cent on stock that was issued for nothing, out of profits on sales.

MR. KELLOCK: My friend is perfectly right. Unless the company can turn over its stock more than once in a year the net profit on sales coincides with the final net profit, and that is what I point out in my brief, but you do not get any such percentage as 50 per cent which my friend talked about in his illustration. I find on the following page, page 9559, my friend asked Mr. Robinson this question:

"Mr. McRuer: Q. I ask you, Mr. Robinson, do you not think it is an enormous profit, having regard to what other people in the community can make ?

Mr. Kellock: What management is there in sitting down drawing bond interest and clipping coupons ?

THE Witness: You would not consider 5 per cent an extraordinary profit on sales, would you ?

Mr. McRuer: Q. An industry can carry on very profitably at 2 per cent net profit ?

man could get it he had his money in a bond, was something terrible."

I think my friend ought to withdraw that statement.

Mr. [illegible]: Not at all.

Mr. McNab: Because I was dealing with what the result shows, and that is that the Common Brandy [illegible] money had just been filtered by a per-on stock that was issued for nothing, out of profits on sales.

Mr. [illegible]: My friend is perfectly right. Unless the company can turn over its stock more times than in a year the net profit on sales outweighs with the final net profit, and that is what I point out in my brief, but you do not get any such percentage as 80 per cent which my friend talked about in his illustration. I find on the following page, page 4889, my friend asked Mr. Robinson this question:

"Mr. Gagner: Q. I ask you, Mr. Robinson, do you not think it is an economic profit, having regard to what other people in the community can make ?

Mr. Gallock: What requirement is there in [illegible] expense ?

Mr. Gilmour: You would not consider a per cent an extraordinary profit on sales, would you ?

Mr. McNab: A. An industry can carry on [illegible] profitably if it can meet net profit ?

THE COMMISSIONER: On sales ?

MR. KELLOCK: Yes, that is what he means, for the evidence goes on:

"Q. At 2 per cent net profit on sales, can it not; it is net profits we are dealing with, not gross profits, - that is, net profits after bond interest is paid, operating expenses are paid, depreciation is paid, after everything is taken into consideration --

The Commissioner: After taxes ?

Mr. McRuer: Q. After taxes are paid, after income tax is paid, all that sort of thing, and yet you show a net profit of 5½ per cent to 6½ per cent per annum in years of depression.

Mr. Kellock: That is not correct, Mr. McRuer. Start with 1930.

The Commissioner: Well, start with 1930.

Mr. McRuer: Oh yes, I see. I beg your pardon.

The Witness: In 1930 we could not afford depreciation.

Mr. Kellock: There was no depreciation in that year at all.

The Witness: No depreciation at all in 1930."

So taking the net profits on sales that the witness speaks about, with varying percentages in the neighbourhood of 5 per cent, the final net profit was 5½ to 6 per cent per annum when they have taken off no depreciation at all, and if they take off depreciation

THE COMMISSIONER: Is a loss?

MR. ALLOUR: Yes, that is what he means, for the evidence goes on:

"A. At 2 per cent net profit on sales, can it not; it is not possible we are dealing with, not gross profits, - that is, net profits after bond interest is paid, operating expenses are paid, depreciation is paid, after everything is taken into consideration --

The Commissioner: Also income tax.

Mr. Wilson: Q. Also taxes, income tax, and income tax is paid, all that sort of thing, and yet you show a net profit of 8½ per cent to 4½ per cent per annum in years of depression.

Mr. Allour: That is not correct, Mr. Commissioner, with the.

The Commissioner: Well, every with 1930.

Mr. Wilson: Oh yes, I see. I has your profits.

The Witness: In 1930 we could not afford depreciation.

Mr. Allour: There was no depreciation in that year at all.

The Witness: Q. Depreciation in

Q. Yes, the fact is when the allowance comes about, with average percentages in the manufacturing of 3 per cent, the first net profit was 3½ to 4 per cent per annum when they have taken off no depreciation at all, and if they take off depreciation

it was not there at all.

MR. McRUER: Do you mean there was no profit there ?

MR. KELLOCK: That is what I read from the evidence. and I certainly thought at the time that that incident took place that my friend was trying to find some standard in the return on a bond by which you could compare what was a reasonable return on the investment of shareholders in an industry such as the textile industry.

MR. McRUER: What I said was that this net profit on sales showed as big a return as the return on capital invested in a bond. It shows an exorbitant profit, to my mind.

THE COMMISSIONER: They are two different things.

MR. McRUER: They are two different things.

THE COMMISSIONER: You say that this company got 5 per cent profit on sales. I cannot tell anything from that statement. I cannot tell what it means to the shareholders.

MR. KELLOCK: In the year 1930 it meant 5½ or 6 per cent before there was any depreciation provided for at all, and in the tables I have given your lordship --

THE COMMISSIONER: What was the profit on sales that year ?

MR. KELLOCK: The profit on sales in that particular year, in 1930, was 5.16 per cent, my lord.

THE COMMISSIONER: And that resolved itself

it was not there at all.

MR. McGUIN: Do you mean there was no profit

MR. MULOOK: That is what I read from the evidence and I certainly thought at the time that it indicated that my friend was trying to line some standard in the return on a bond by which you could compare what was a reasonable return on the investment of shareholders in an industry such as the textile industry.

MR. MORLEY: What I said was that the net profit on sales showed as big a return as the return on capital invested in a bond. It shows an exorbitant profit, to my mind.

THE COMMISSIONER: They are two different things.

MR. McGUIN: They are two different things.

THE COMMISSIONER: You say that this company got 5 per cent profit on sales. I cannot tell anything from that statement. I cannot tell what it means to the shareholders.

MR. MULOOK: In the year 1920 it earned 5- or 6 per cent before there was any depreciation provided for at all, and in the tables I have given your lordship —

THE COMMISSIONER: What was the profit on sales

MR. MULOOK: The profit on sales in that particular year, in 1920, was 5.14 per cent, or less.

THE COMMISSIONER: Are they provided itself

into a profit of how much ?

MR. KELLOCK: It resolved itself into probably very much less than 5 per cent --

THE COMMISSIONER: You said something before --

MR. KELLOCK: That was before depreciation.

THE COMMISSIONER: I cannot tell anything from that alone. You would have to know the volume of the sales. I mean to say, you are talking of two different things. When you talk of interest on a bond, you know what you are getting. You pay one hundred dollars for your bond, and you get 5 per cent interest, and that is the end of it. But when you tell me that a company makes so much profit on sales, unless I know a whole lot more about the company and its volume of business, it does not mean anything to me.

MR. KELLOCK: In that year --

THE COMMISSIONER: I do not think Mr. McRuer was comparing the percentage of profit on sales with the interest on a bond. There was something more than that. It was the net result to the shareholder that he had in mind.

MR. KELLOCK: Yes, and that depends upon how often the capital is turned over in a year.

THE COMMISSIONER: And upon a lot of other things too.

MR. KELLOCK: We find that in that year the final real net profit was 3.4 per cent.

MR. McRUER: On sales.

MR. KELLOCK: No, on the shareholders' capital

into a profit of how much ?

MR. MILLOUR: It resolved itself into probably very much less than 5 per cent --

THE COMMISSIONER: You said something before --

MR. MILLOUR: That was a supposition.

THE COMMISSIONER: I cannot tell anything from that alone. You would have to know the volume of the sales. I mean to say, you are talking of two different things. When you talk of interest on a bond, you know what you are getting. You pay one hundred dollars for your bond, and you get 5 per cent interest, and that is the end of it. But when you tell me that a company makes so much profit on sales, unless I know a whole lot more about the company and its volume of business, it does not mean anything to me.

MR. MILLOUR: In that case --

THE COMMISSIONER: I do not think Mr. Mosher was comparing the percentage of profit on sales with the interest on a bond. There was something more than that. It was the net result to the shareholder that he had in mind.

MR. MILLOUR: Yes, and that depends upon how often the capital is turned over in a year.

THE COMMISSIONER: And upon a lot of other things too.

MR. MILLOUR: We find that in that year the firm [illegible]

MR. [illegible]

MR. [illegible] Mr. [illegible]

-- on the shareholders' equity in the business.

MR. McRUER: The shareholders' equity in the business is a different thing. The shareholders did not put that in.

THE COMMISSIONER: You are involving too many different things. You speak of a man buying a bond, where the capital is kept intact, neither increased nor decreased.

MR. KELLOCK: Yes.

THE COMMISSIONER: But in the case of a shareholder getting 2 or 3 per cent of a dividend from a company where 40 per cent of the company's profits were reinvested in the business, the value of the shareholders' stock is increased by so much, so you cannot compare the two.

MR. KELLOCK: Quite so, but you can compare --

THE COMMISSIONER: You can compare anything, but I mean they are not the same thing. You cannot say: I only got 3 per cent on my stock, and so and so, who bought a government bond, got 4 per cent, a better return than I am getting, because if the company put 40 per cent of its profits back into the business and the shareholder consented to it, that increased his capital, but the man who bought a bond did not get any increase on his capital. His principal was $100, and it is $100 still.

MR. KELLOCK: In the figures that I have given to your lordship in my factum I have eliminated that consideration and taken the net profit accruing to

-- on the investments' equity in the business.

Mr. [illegible]: The shareholders' equity in the business is a different thing. The shareholders did put out that in.

The [illegible]: You are inviting too many different things. You speak of a man buying a bond, where the capital is kept intact, neither increased nor decreased.

Mr. [illegible]: Yes.

The [illegible]: But in the case of a stockholder getting 5 or 6 per cent of a dividend from a company where 40 per cent of the company's profits were retained in the business, the value of the shareholders' stock is increased by so much, so you cannot compare the two.

Mr. [illegible]: Quite so, but you can compare --

The [illegible]: You can compare anything, but I mean they are not the same thing. You cannot say: I only get 5 per cent on my stock, and so and so, who bought a government bond, get 4 per cent, a better return than I am getting, because if the company put 40 per cent of its profits back into the business and the shareholder consented to it, that increased his capital. But the man who bought a bond did not get any increase on his capital. His original was gone, and it is gone still.

Mr. [illegible]: In the figures that I have given to you yesterday in my factum I have estimated that investments and taken the net profit accruing to

the shareholder.

THE COMMISSIONER: You have eliminated it in what. You did not eliminate it in your argument.

MR. KELLOCK: I was dealing with the standard which I thought my friend was setting up. In my brief, statement No.3 shows the net profits, and that figure of net profits includes not only what was distributed among the shareholders in fact but what was retained by the company and reinvested.

Now, my lord, may I refer to Section H of my brief. This is to some extent allied with what we have been discussing, and that is the reason I think it comes in logically here. I quote from Section H:

> "It has been considered necessary and desirable for the textile industry in Canada, in common with other industries in Canada and elsewhere, to have trade associations where matters of common interest to the trade may be discussed and facilities provided for making information available and giving services to individual members which the individual members themselves could not provide except at a prohibitive cost. The evidence (p.8651 et. seq.) outlines the nature of the services performed by the associations maintained by the textile industry in Canada which, generally speaking, include the preparation and presentation of cases from time to time to the Tariff Board, furnishing information regarding the industry to the members and the government, and compiling statistics and

Mr. Justice H: You have eliminated it in what you did not eliminate it in your argument.

Mr. Justice: I was dealing with the standard which I thought my friend was getting up. In my brief, statement No.3 shows the net profits, and that figure of net profits includes not only what was allocated among the shareholders in fact but what was retained by the company and reinvested.

Now, my lord, may I refer to Section H of my brief. This is to some extent allied with what we have been discussing, and it is the reason I think it comes in logically here. I quote from Section H:

"It has been contended necessary and desirable for the textile industry in Canada, in common with other industries in Canada and elsewhere, to have trade associations where matters of common interest to the trade may be discussed and facilities provided for making information available and giving services to individual members which the individual members themselves could not provide except at a prohibitive cost. The evidence (p.5551 et. seq.) outlines the nature of the services performed by the associations maintained by the textile industry in Canada which include, especially matters, include the preparation of cases from time to time to the Tariff Board, furnishing information regarding the industry to the government, the preparing statistics and

other information.

An aspect of association work which was given considerable prominence in the evidence concerned certain groups where fair trade practices were established, and in some cases attempts made to stabilize prices, and consider control of production. There was no evidence that these activities were detrimental to or against the interests of the public or resulted in injury to or undue restraint of trade. It is submitted that the action of the groups of the industry affected by the above arrangements was beneficial from a public point of view. The fair trade practices were established to prevent discrimination as between purchasers by means of discounts, rebates and allowances, and to mark merchandise properly for the benefit of the public. Attempts at price stabilization were made to modify wasteful or demoralizing trading conditions in certain products but the arrangements were not rigid and it is submitted that an ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public.

In every trade there become established certain methods of dealing with customers which become known and recognized throughout the trade as the most mutually fair and satisfactory arrangements for conducting business and which,

Price Commission.

In respect of association were which was given considerable prominence in the evidence concerned certain groups where fair trade practices were established, and in some cases attempts made to stabilize prices, and a similar control of production. There was no evidence that these activities were detrimental to or reflect the interests of the public or resulted in injury to or undue restraint of trade. It is submitted that the action of the groups of the industry affected by the above arrangements are beneficial from a public point of view. The fair trade practices were established to prevent discrimination as between purchasers by means of discounts, rebates and allowances, and to mark merchandise properly for the benefit of the public. Attempts at price stabilization were made to avoid, wastful or demoralizing trading conditions in certain products but the arrangements were not rigid and it is submitted that an ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public.

In every trade there become established certain methods of dealing with customers which become known and recognized throughout the trade as the most satisfactory and satisfactory arrangements for conducting business and which

if departed from in the case of some customers only, would constitute discrimination in favour of those customers as against other customers, It is generally held that to upset these established practices is not good trade practice. It is true that in the case of the textile industry many provisions for the maintenance of fair trade practices went along with measures adopted to stabilize prices, but it is not true that efforts at price stabilization were any essential part of the reason for the efforts which were made to maintain fair trade practices and prevent discrimination between customers. On the contrary, the evidence is that many fair trade measures were urged and maintained for sections of the industry and for mills which at no time took part in any attempts at price stabilization. It should be pointed out that the existence of price and other discriminations between customers was a situation which was severely criticized by the Price Spreads Commission and which, as a result of their report, has been subject of legislation."

I do not know whether the new section 498A of the Criminal Code has been drawn to your lordship's attention. That section now provides:

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TORONTO - CANADA

if departed from in the case of some s[illegible]
[illegible], such modifications [illegible]
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sion which, as a result of their report, has
been subject of legislation."

I do not know whether the new section 498A of the
Criminal Code has been drawn to your Lordship's
attention. That section now provides:

"Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars or to one month's imprisonment, or, if a corporation, to a penalty not exceeding five thousand dollars, who

(a) is a party or privy to, or assists in, any transaction of sale which discriminates to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

The provisions of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

(b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;"

"Every person engaged in trade or commerce or industry in policy of an individual effect was liable to a penalty not exceeding one thousand dollars or to one month's imprisonment, or, if a corporation, to a penalty not exceeding five thousand dollars, who

(a) in a party or privy to, or assists in, any transaction of sale which participates to his knowledge, secret concessions of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

The provisions of this paragraph shall not, however, prevent a co-operative society returning to members or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in the trading operations in proportion to purchases made from or sales to the society;

(b) engages in a policy of selling goods in any area at lesser prices than those charged by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such area;"

THE COMMISSIONER: When was that enacted ?

MR. KELLOCK: In 1935.

THE COMMISSIONER: It would be in the statutes of 1935 ?

MR. KELLOCK: Yes, 25-26 Geo.V, Chapter 56, section 9.

MR. McRUER: Can my friend tell us what it means? There is considerable judicial confusion over it.

THE COMMISSIONER: Has it ever been before the courts ?

MR. McRUER: It is one of the acts that went to the privy council.

THE COMMISSIONER: Its validity was upheld.

MR. McRUER: It was held to be constitutional, but there was some judicial comment.

THE COMMISSIONER: You have read the judgment ? I would like to have the judgment in the privy council case.

MR. McRUER: All the judgments were printed in the Votes and Proceedings of about two weeks ago. Mr. Rene can get that.

THE COMMISSIONER: This is the only thing that concerns me, is it not ?

MR. KELLOCK: I think so, my lord. I was also going to draw your lordship's attention to some parts of the Trade and Industry Commission Act, which is chapter 59 of the same year. It covers additional ground.

MR. McRUER: This was merely held to be constitutional, that is, that the government of Canada had

THE CHAIRMAN: When was that enacted?

MR. [illegible]: In 1900.

THE CHAIRMAN: It would be in the statutes of 1900?

MR. [illegible]: Yes, 63-64 Vic. C, Chapter 58, section 9.

MR. [illegible]: Can my friend tell us what it means is constitutionally judicial confirmation over it.

THE CHAIRMAN: Has it ever been before the courts?

MR. [illegible]: It is one of the cases that went to the privy council.

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MR. [illegible]: All the judgments were printed in the votes and proceedings of about two weeks ago.

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MR. [illegible]: I think so, my lord. I was also going to draw your lordship's attention to some parts of the Trade and Industry Commission Act, which is chapter 59 of the same year. It covers additional [illegible].

MR. [illegible]: This was merely held to be a constitu-

power to declare these practices, whatever they were, a criminal offence.

THE COMMISSIONER: That is all it could do.

MR. KELLOCK: Good legislation.

MR. McRUER: They did not say it was good legislation, but that it was valid legislation.

THE COMMISSIONER: The Customs Tariff is valid legislation, but Mr. McRuer does not agree that it is good legislation.

MR. KELLOCK: Quite so. My friend's point of view is very evident all through his argument. I refer again to my brief, page 2 Section H:

"Some of the subjects which could be classified as fair trade practices,"

THE COMMISSIONER: Should not "fair" trade practices read "unfair" trade practices ? I would assume that everything was fair that was not positively unfair.

MR. KELLOCK: It should be "unfair".

THE COMMISSIONER: It is a clerical error, is it not ?

MR. KELLOCK: It should read "unfair". I quote:

"Some of the subjects which could be classified as unfair trade practices which have been dealt with in the evidence are allowances for freight charges (f.o.b. mill), terms of payment (i.e. prepayment allowances and discounts), proper marking of merchandise (i.e. discontinued lines,

power to deprive them of rights, whatever they were, or criminal offences.

THE CHAIRMAN: That is all it could do.

Mr. [illegible]: Been indicted.

MR. MOLONY: They did not say it was good legislation, but that it was valid legislation.

THE CHAIRMAN: The Customs Tariff is valid legislation, but Mr. Molony does not agree that it is good legislation.

Mr. [illegible]: Quite so. My friend's point of view is very evident all through his argument. I refer again to my brief, page 2 section 3:

"Some of the subjects which could be classified as fair trade practices."

THE CHAIRMAN: Should not "fair" trade practices have "commercial trade practices"? I would assume that every thing was fair that was not positively unfair.

Mr. [illegible]: It should be "unfair".

THE CHAIRMAN: It is a clerical error, is it not?

MR. [illegible]: It should read "unfair". I quote:

"Some of the subjects which could be classified as unfair trade practices which have been [illegible] with in the schemes for [illegible] [illegible], [illegible], [illegible] [illegible] [illegible]).

[illegible] (i.e. [illegible] lines,

seconds &c), payment of customers' advertising, providing of store furniture, unnecessary re-finishing of merchandise, payment of sales clerks' wages, giving of merchandise as premiums, rebates and allowances, proper definition of 'wholesale' as distinct from 'retail' customers &c."

MR. McRUER: What do you mean by "discriminations" ? That they might sell at a common price, but that some customers, for instance, would get window displays which would be unfair to others because one man has a good corner store for a window display.

MR. KELLOCK: Give a lower price.

MR. McRUER: That if one store gets window display all stores should get it ?

MR. KELLOCK: I do not think I mentioned window displays.

MR. McRUER: I am just asking for an illustration.

MR. KELLOCK: I cannot do it all in one sentence.

MR. McRUER: You say, "customers' advertising."

MR. KELLOCK: If my friend will just be patient I think he will see that I cover the ground. Referring again to page 2, Section H of my brief:

"With regard to allowances for freight, the evidence is that it has been the practice among cloth mills to sell f.o.b. mill and that in the year 1934 pressure was brought to bear by some customers fo the mills to obtain special advantage for themselves by having the mill pay their freight. A canvass was made of the mills

[illegible] act, payment of a customer's electricity,
providing to other retailers, maintaining re-
fuelling or servicing, payment of sales
clerks' wages, giving or accessories as premiums,
rebates and allowances, proper definition of
'wholesale' as distinct from 'retail' customers [illegible]

Mr. McCann: What do you mean by "discriminatory"?
That they might sell at a common price, but that some
customers, for instance, would get window displays
which could be useful to others because one man has
a good corner place [illegible] [illegible].

Mr. Gillies: Give a lower price.

Mr. McCann: Does it cost more to give window displays
all stores should get it?

Mr. Gillies: I do not think I mean lower window
displays.

Mr. McCann: I am just asking for an illustration.

Mr. Gillies: I cannot do it all in one sentence.

Mr. McCann: You say, "customers' advertising."

Mr. Gillies: If my friend will just be patient
I think he will see that I have the answer. Re-
[illegible] to page 5, [illegible] of my brief:

"The events in Alexander Mc Ingram,
the evidence is that it has been the practice
among cloth mills to sell f.o.b. mill and that
in the year 1924 pressure was brought to bear
by some customers to the mills to obtain special
[illegible] for themselves. By giving the mill [illegible]
[illegible]. A [illegible] the mill [illegible]

to determine what the established practice was in this respect," --

That is, what had grown up in the industry:

"-- and it was confirmed that the custom was to sell f.o.b. mill and that, therefore, payment of freight to a customer would constitute discrimination with respect to that particular customer."

THE COMMISSIONER: That would mean the manufacturer would pay the freight without increasing the price ?

MR. KELLOCK: Yes, for one customer but not for others. Continuing:

"It is clear from the evidence that although some of the mills who were canvassed on this matter took part in price arrangements, there were also many other mills who had not been parties to any such arrangements, and in fact there were some whose products were of a type so different from those of the other mills that they could not conceivably be interested in any such discussions."

I am merely developing the argument, my lord, that arrangement of prices is not necessarily any part of fair or unfair trade practices at all.

Page 16827 follows

to determine what the established practice was in this respect." --

That is, what had grown up in the industry:

"-- and it was confirmed that the system was to sell f.o.b. mill and that, therefore, payment of freight to a customer would constitute discrimination with respect to that particular customer."

THE COMMISSIONER: That would mean the manufacturer would pay the freight without increasing the price?

Mr. HALLOCK: Yes, for one customer but not for other.

It is clear from the evidence that although some of the mills who were concerned on this matter took part in price arrangements, there were also many other mills who had not been parties to any such arrangements, and in fact there were some whose products were of a type so different from those of the other mills that they could not conceivably be interested in any such discussions."

I am merely developing the argument, my lord, that arrangement of prices is not necessarily any part of fair or unfair trade practices at all.

Page 16627 follows

MR. McRUER: Do you mean that volume of production would have nothing to do with it? Supposing a mill had a customer who took a heavy volume of production, and one who just took a small yardage; would you say it is an unfair trade practice if you were to pay the freight for the one that takes the heavy volume of production?

MR. KELLOCK: I would think it was --

MR. McRUER: I just wanted --

MR. KELLOCK: Just a minute till I answer you. I would think it was, knowing as little as I know about the industry, but my view would be this, that there would be nothing to hinder, and I don't know that there would be any objection from the standpoint even of a new section in giving a price which was a better price for the same quantity.

MR. McRUER: What is the difference if he does so by paying the freight or giving a better price?

MR. KELLOCK: That is not what I am speaking about at all. I am speaking about the same kind of sale, where you simply pay the freight for one customer and not for another. You are, under a cloak, as it were, giving one customer a better price on his sale than another.

MR. McRUER: Supposing he is a good customer.

THE COMMISSIONER: You are now dealing with this act, 498-A, which is designed to prevent competition of a certain class.

MR. KELLOCK: Yes, it is discriminatory competition.

had a customer who took a heavy volume of merchandise, and one who just took a small package; would you say it is an unfair trade practice if you were to pay the freight for the one that takes the heavy volume of merchandise?

Mr. [illegible]: I would think --

Mr. McLEOD: I just wanted --

Mr. MILLOUX: Just a minute till I answer you. I would think it was, knowing as little as I have about the industry, but my view would be this, that there would be nothing to hinder, and I don't know that there would be any advantage from the standpoint of a new section in giving a price which was a better price for the average quantity.

Mr. McLEOD: What is the difference if he does so by paying the freight or giving a better price?

Mr. MILLOUX: That is not what I am speaking about at all. I am speaking about the same size of sale, where you simply pay the freight for one customer and not for another. You are, under a cloak, as it were, giving one customer a better price on his sale than another.

Mr. [illegible]: Suppose he is a good customer.

The [illegible]: You are not dealing with this act, 400-, which is designed to prevent competition of a [illegible] kind.

Mr. [illegible]: Yes, it is discriminatory on that

THE COMMISSIONER: It has nothing to do with encouraging competition. It is the other way around. For that you have to go to the Combines Act, things of that sort. What are you doing here, endeavouring to illustrate to me the sort of things you think would be punishable under this Act?

MR. KELLOCK: What I am doing is this; when I was preparing this factum I did not have my friend's factum. I did not know what my friend's line of attach was, but all through the evidence my friend in his examination took this view --"what do you people mean by getting together and saying that you won't give these discriminatory allowances", whether it is a freight allowance, or paying clerks salaries or anything of that kind. My friend thought that was vicious.

THE COMMISSIONER: I suppose he still thinks it is vicious.

MR. KELLOCK: He doesn't mention it in his factum now.

THE COMMISSIONER: The fact that you have an act of Parliament authorizing your view to become law does not prevent Mr. McRuer from offering his criticism.

MR. McRUER: The point I was making, my lord, was that Mr. Hallem was contending for a long time when he was examined in Toronto there was no price agreement. In the cloth industry, for instance, I was bringing out in my cross-examination that you would not agree, for instance, that you would all sell f.o.b. if there wasn't a body to maintain a

THE COMMISSIONER: It was working to be with
[illegible]ying constitution. It is the only way around,
for that you have to go to the Supreme Court,
or that sort. What are you doing here, endeavoring
to illustrate to me the sort of things you think
would be punishable under this act?

MR. [illegible]: That I am quite in that; when I
was proposing this section I did not have my friend's
[illegible]. I did not know what my friend's line of
attack was, but all through the evidence my friend in
his examination took this view --"What do you mean
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a freight allowance, or paying clerks salaries or any
thing of that kind. My friend thought that was
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THE COMMISSIONER: I suppose he still thinks it is
[illegible].

MR. [illegible]: He doesn't mention it in his [illegible]
[illegible].

THE COMMISSIONER: The fact that you have an act
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MR. [illegible]: The point I was making, my lord,
was that Mr. [illegible] was contending for a long time
when he was examined in Toronto there was no price
[illegible]. In the cloth industry, for instance, I
[illegible] ting out in my cross-examination that you
[illegible] not agree, for instance, that you could sell
[illegible]. If there weren't a law to [illegible]

common price. Eventually we got the evidence from Mr. Dodd in Montreal that there was an agreement in regard to the cloth, and Mr. Dodd said --

THE COMMISSIONER: Pardon me, you refer to these written agreements, don't you, the letters? They all fixed a particular price, that the price of such an article is so much f.o.b. mill. The price was absolutely settled.

MR. McRUER: We didn't have at that time, when we examined Mr. Hallam, the agreements that Mr. Dodd finally filed in Montreal, and Mr. Dodd said very frankly the reason that we had this agreement not to sell f.o.b. mill was because it would be a cutting of the price that we had agreed on.

THE COMMISSIONER: You say not to sell f.o.b. mill?

MR. McRUER: To sell f.o.b. mill, not to sell f.o.b. customer, or make any encroachment on it because it would be a cutting of the price we agreed on. Mr. Dodd was most frank in that statement. Now, it is quite true as my friend says that when we examined Mr. Hallam we did not have that evidence, because he was contending there were no cloth agreements.

MR. KELLOCK: I do not agree with that at all.

MR. McRUER: He was denying it.

THE COMMISSIONER: You are talking of cloth now?

MR. McRUER: Yes.

THE COMMISSIONER: I had in mind hosiery.

MR. McRUER: This is in regard to the cloth; Mr.

common price. Incidentally we got this evidence from it. Good in cross-examination that there was an agreement in regard to the cloth, and Mr. Lord said --

The CHAIRMAN: Excuse me, you refer to those written agreements, don't you, the letters? They all fixed a particular price, that was price of such an article is so much f.o.b. mill. The price was somewhat variable.

Mr. MORGAN: We didn't have at that time, when we [illegible] Mr. [illegible]. The agreement [illegible] finally filed in evidence, and Mr. Lord said very frankly the reason that we had this agreement not to sell f.o.b. mill was because it would be a matter of the price that we had agreed on.

The CHAIRMAN: You say not to sell f.o.b. MILL.

Mr. MORGAN: To sell f.o.b. mill, not to sell f.o.b. customer, or make any arrangement on it because it would be a matter of the price we agreed on. Mr. Lord was quite frank in that statement. Now, it is quite true as my friend says that I began to examine Mr. Mallon we did not have that evidence, because he was contradicting there were no cloth agreements.

Mr. KELLOCK: I do not agree with that at all.

Mr. MORGAN: He was denying it.

The CHAIRMAN: You are talking of short more [illegible] Tom.

The CHAIRMAN: I had in mind Mallory.

Mr. MORGAN: Only I'm speaking of the evidence.

Dodd, who was sales manager for Barrymore Cloth --

MR. KELLOCK: Worsted cloth.

MR. McRUER: Woollen and worsted.

5 MR. KELLOCK: No, just worsted.

MR. McRUER: The letters I read in regard to that were letters where they were more or less reproving the mills, pointing out that some were selling f.o.b. customer and some f.o.b. mill. Now, this

10 was a bad practice. Mr. Hallam would not confess the reason it was a bad practice was because it was a cutting of prices that were agreed on.

MR. KELLOCK: I say it has nothing to do with it.

MR. McRUER: My friend says it has nothing to do

15 with it. Mr. Dodd said it had.

THE COMMISSIONER: Why it is a bad practice if it does not affect the price? I thought that is why it was a bad practice. I mean, under this act --

MR. KELLOCK: It does, but that is not exactly

20 what I mean, my lord. My submission is -- my point is, rather, that my friend ties up these unfair trade practices which do, of course, affect prices, to the agreements or documents or whatever we like to call them,

25 which fix definite prices. Now, my lord, all my argument is -- the whole burden of my argument is that in regard to these unfair practices that the mills were perfectly proper and justified, apart altogether from fixing a common price as among themselves, in

30 agreeing that these things should not continue.

THE COMMISSIONER: What things should not continue?

MR. KELLOCK: That is, this unfair practice of selling f.o.b. customer instead of f.o.b. mill.

THE COMMISSIONER: How can you say that is an unfair practice if it is arranged so it makes no difference in the price?

MR. KELLOCK: Well, I don't put that forward because, of course, an allowance f.o.b. customer would make a difference in the price as between two customers.

THE COMMISSIONER: You must get back to that.

MR. KELLOCK: That is the vice of it. All I am saying, my lord, is that there were branches of the industry where they did not fix prices at all. That is, they did not fix actual selling prices. They simply fixed the practice --

THE COMMISSIONER: Repeat that again.

MR. KELLOCK: That they did not fix common prices as among them all. They simply said --

THE COMMISSIONER: Where do you get your authority for that? Perhaps you are talking of one thing and I of another. Take, for instance, those agreements in reference to the hosiery people.

MR. KELLOCK: I am coming to those.

THE COMMISSIONER: Do you mean to say they did not set the price?

MR. KELLOCK: They did.

THE COMMISSIONER: They set the price on such an article as so much f.o.b. factory.

MR. KELLOCK: I say that some branches of the industry, which did not have these arrangements, agreed

MR. KELLOCK: That is, this unfair practice of selling f.o.b. customer instead of f.o.b. mill.

THE COMMISSIONER: How can you say that is an unfair practice if it is arranged so it makes no difference in the price?

MR. [illegible]: Well, I don't put that forward because, of course, on allowance f.o.b. customer would make a difference in the price as between the customers.

THE COMMISSIONER: You must put that to them.

MR. [illegible]: That is the view of it. All I am saying, my Lord, is that there were [illegible] of the industry where they did not fix prices at all. That is, they did not fix actual selling prices. They simply fixed the practice --

THE COMMISSIONER: Repeat that again.

MR. [illegible]: That they did not fix common prices as among them all. They simply said --

THE COMMISSIONER: Where do you get your authority for that? Perhaps you are talking of one thing and of another. Take, for instance, those agreements in reference to the Lockey people.

MR. KELLOCK: I am coming to those.

THE COMMISSIONER: Do you mean to say they did not fix prices?

MR. KELLOCK: Yes.

THE COMMISSIONER: They had the prices on such a [illegible] Tuesday.

MR. KELLOCK: I say that some members of the industry, [illegible] did not make [illegible]

that they would not sell any way except f.o.b. mill. In other words, they didn't--

MR. McRUER: Which branches?

MR. KELLOCK: Just a minute.

THE COMMISSIONER: That is regardless of price?

MR. KELLOCK: Regardless of price; in other words, they would sell at their own price.

THE COMMISSIONER: Perhaps they did, but I will be quite candid and say if I am going to be told to imagine they were not caring what the price was so long as it was sold f.o.b. mill, that there would be absolutely no sense to that. You must get back to the price.

MR. KELLOCK: My lord, apart -- let me illustrate what I mean in this way -- apart from any concerted agreement to charge a common price in the section of the industry where that isn't done, competition itself will result in this that if I advertise my prices -- I am a mill and I advertise my prices at so much. The other mills, if they are going to compete with me on the same kind of goods, apart from quality, have got to follow suit.

THE COMMISSIONER: The same price.

MR. KELLOCK: They have got to come to that.

THE COMMISSIONER: Then, if you are paying the freight of course you are reducing the price.

MR. KELLOCK: I am reducing the price.

THE COMMISSIONER: It all gets back to that. It is no use trying to say it is anything else. all these things, no doubt, are designed to prevent one manufacturer from selling to the retailer or other

that they would not sell any any cheaper f.o.b. mill.

In other words, they didn't--

MR. McKUEN: which hamobest?

MR. KELLOCK: Just a minute.

THE COMMISSIONER: That is regardless of price?

MR. KELLOCK: Regardless of price; in other words they would sell at their own price.

THE COMMISSIONER: Perhaps they did, but I will be quite candid and say if I am going to be told to imagine they were not coming what the price was so long as it was sold f.o.b. mill, that there would be absolutely no sense to that. You must get back to the price.

MR. KELLOCK: My lord, apart -- let me illustrate what I mean in this way -- apart from any concerted agreement to charge a common price in the session of the industry competition itself will result in this that if I advertise my prices -- I am a mill and I advertise my prices at so much. The other mills, if they are going to compete with me on the same kind of goods, must from reality, have got to follow suit.

THE COMMISSIONER: The same price.

MR. KELLOCK: They have got to come to that.

THE COMMISSIONER: Then, if you are paying the freight of course you are reducing the price.

MR. KELLOCK: I am reducing the price.

THE COMMISSIONER: It all gets back to that. It is no use trying to say it is anything else. All these things, we think, are designed to prevent one manufacturer from selling for any reason at any

customers at a lesser price than the other. Whether he does it ordinarily by saying my price is so much less, or I will pay the freight for you, or I will give you a premium, or something of that sort, it all gets back to this, that you do not want one manufacturer to sell at a lesser price than the other. Now, that is right.

MR. KELLOCK: In that under-cover method.

THE COMMISSIONER: Any method.

MR. KELLOCK: That is what the statute hits at. Now, my lord, I don't know --

THE COMMISSIONER: I say apparently that is what Parliament did, met your views, the views of the manufacturers by passing that statute 493-A, and the Privy Council said Parliament had the power to do that. That does not mean to say that everything is satisfactory, that it is proper to do this, and it must not be a question any more as to practice.

MR. KELLOCK: That means that these things cannot be questioned.

THE COMMISSIONER: I am not talking of that legally. As I say, the Customs Tariff is perfectly legal, valid and constitutional; nevertheless it has been argued before me for a whole year now nearly that it is too high. Things may be legal and still I am here to hear reasons why it ought not perhaps to be changed.

MR. KELLOCK: Very well, my lord. Then, I will continue with my discussion, and at the foot of page two, my lord --

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THE COMMISSIONER: The foot of page two?

MR. KELLOCK: The foot of page two--

"That the practice which had been the custom of the trade, namely, selling f.o.b. mill, was not only fair but sound economically is shown by the authority referred to in the evidence, namely 'Principles of Economics' by Garber and Hanson, as follows: - 'The trade practices of the various industries with respect to price policy throw light on the way competition works in the modern organized economy. In many industries the usual practice is to sell f.o.b. at the mill, the purchaser paying the cost of transportation from the mill. Thispractice comes nearest to satisfying the requirements of a truly competitive market. Under this system the buyers are fully enabled to exercise alternative choices and to purchase at the lowest price plants, cost of transportation considered. This policy, universally pursued, would result in the most economical geographical distribution of industries and hence in the most efficient utilization of the nations' resources".

Then, with regard to terms--

THE COMMISSIONER: He means, I suppose, that the tendency for the purchaser in that case would be to buy from the nearest manufacturer all other things being equal.

MR. KELLOCK: And it would affect the distribution

The WITNESS: The foot of page two?

Mr. ELLIOTT: The foot of page two—

"That the practice which has been the success of the trade, namely, selling f.o.b. mill, was not only fair but sound economically is shown by the authority referred to in the evidence, namely, 'Principles of Economics' by Marshall and Marshall, as follows: - 'The true problems of the trade insurance with respect to price policy thus light on the very construction work in the modern organized economy. In many industries the usual practice is to sell f.o.b. at the mill, the purchaser meeting the cost of transportation from the mill. Delivery price seems convenient to antagonizing the requirements of a fairly competitive market. Many mills have become so fully equipped to execute with prudence choices and to purchase at the lowest price places, cost of transportation considered. This policy, universally pursued, would result in the most economical geographical distribution of industries and hence in the most efficient utilization of the national resources".

Q. (Mr. Elliott to Witness)—

The WITNESS: I assume, I suppose, that the tendency for the purchaser in that case would be to buy from the nearest manufacturer of the commodity.

Mr. ELLIOTT: And it would effect the distribution

of the industry; the industry would tend to go closest to the market.

THE COMMISSIONER: Closest to the market.

MR. KELLOCK: " The evidence shows that the custom in the cloth trade was to invoice goods delivered after the 25th of any month as of the 1st of the following month. There were some customers of one of the mills who attempted to obtain better terms for themselves by having goods delivered to them earlier than the 25th, still dated as of the 1st of the following month. This request if acceded to would have resulted in discrimination in favour of the customers seeking the change unless it were extended to all customers of the mills. Unless so extended it would be an unfair trade practice which had nothing whatever to do with any arrangements as to prices. The views of the mills were obtained by the Association. The evidence shows the universal nature of the custom as to dating which was in existence in the industry."

Then, marking of merchandise, and this, my lord, I submit is particularly in the interests of the buying public.

" In the exhibits which have been put in relating to the stabilization of prices in the full fashioned hosiery branch of the industry, namely, Exhibits 565-568, a number of these unfair trade practices are dealt with"-- that is the ones I have already covered --"and among these the matter of the proper marking of merchandise. The subject is

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of the industry; the industry must turn to go closer to the market.

The Court decides; closest to the market.

Mr. Justice: " The evidence shows that the contract in the cloth trade was to include goods delivered after the 15th of any month so as to the 1st of the following month. There were some customers of one of the mills who objected to that method of terms for transactions by having goods delivered to them earlier than the 15th, still tied to the 1st of the following month. This respect it needed to would have resulted in restraint of trade in favor of the customers needing the goods in more extended to all customers of the mills. Unless so extended it would be no market trade practice which had nothing whatever to do with any arrangements as to prices. The views of the mills were obtained by the consultation. The mills are aware the universal method of the cotton to trading which was in existence in the industry.

Mr. Justice, speaking of moreover, and this, my lord, I think is particularly in the interests of the buying public. " In the candidate which happens put in relation to the establishment of prices in the full Platinum trading trades of the industry, usually called 300-300, a number of these market transactions are dealt with -- but it is the case I have already covered --"and among these the matter of the proper meaning of terminology. The question

"dealt with in paragraph 11 of Exhibit 563 requiring all stockings not first-class to be marked as such. There is a distinct disadvantage, from the standpoint of the mills, in adopting this practice as some retailers are willing to pay the mill more for seconds which are not marked as such. These retailers are able to market this merchandise as firsts to the prejudice of the public, and to the prejudice of the retailer who is not willing to follow such practice".

MR. McRUER: You say mark them as firsts?

MR. KELLOCK: No, I said to sell them as firsts.

THE COMMISSIONER: Sell them unmarked.

MR. KELLOCK: Sell them unmarked. Walking along the streets I think you can see that practice in some other branches of trade now.

"-- and to the prejudice of the retailer who is not willing to follow such practice. Notwithstanding that it was a sacrifice to the mills to mark seconds as such, those mills which were from time to time parties to the price arrangements did so".

And that was part of the arrangement that they would, if it was a second they were turning out, they would mark it so that the ultimate purchaser would know what he was getting, and would not have that put on him as though it was a first.

THE COMMISSIONER: That was alright.

MR. KELLOCK: Then, advertising allowances.

"dealt with in section 11 of Article 886 possible by all societies not first-class to be marked as such. There is a distinct disadvantage, from the standpoint of the mills, in a certain this practice as some retailers are willing to pay the mill more for seconds which are not marked as such. These retailers are able to market this merchandise as "fitted to the predilec of the public, and to the prejudice of the retailer who is not willing to follow such practice".

MR. [illegible]: Can any mark them as firsts?

MR. [illegible]: No, I said to sell them as firsts.

THE [illegible]: Sell them somehow.

MR. [illegible]: [illegible] the stores I other brands of trade mark.

"-- due to the prejudice of the retailer who is not willing to follow such practice. Notwithstanding that it was a sacrifice to the mills to sell such goods, those mills which were from time to time parties to the price arrangements did so".

And that was part of the arrangement that they would, if it was a second that were turning out, they would mark it so that the ultimate purchaser could know what he was getting, and would not have that put on him as firsts.

[illegible]

[illegible]

"The same exhibits 563-568 deal with this subject in paragraph 4. This paragraph places a limit on such advertising allowances and in this way eliminated discrimination as between the mills' customers."

Then, with regard to store furniture --

"The same exhibits also deal with the question of equipment supplied by the mills to distributors, limiting this matter to a uniform practice to avoid discrimination.

The Price Spreads Commission had the following to say with regard to the textile trade associations: 'A field in which the trade association might perform useful service is in the promotion of proper standards in consumer goods, eliminating dishonest marking and labelling, and curbing unfair competitive practices."

Now, my lord, I submit up to that point we are carrying out the recommendation of another Royal Commission, which is, I submit, in the interests of the public.

THE COMMISSIONER: Yes; of course, you see the terms are very wide, curbing unfair trade practice. You have got to sit down and decide what practices are unfair and what are not.

MR. KELLOCK: Quite.

THE COMMISSIONER: Read the language again of the recommendation.

MR. KELLOCK: "'A field in which the trade association might perform useful service is in the promotion'"-- it was speaking with particular

ROBT. BRYDIE
CHARTERED STENOGRAPHIC REPORTER
TORONTO CANADA

"In some particular [illegible] this proposed in paragraph 4. This paragraph places a limit on such advertising allowances and in this way affords a discrimination as between the milk customers."

5 Then, with regard to stores furniture --

"The same condition also deal with the question of equipment supplied by the milk to distributors, limiting this matter to a uniform practice to avoid discrimination.

10 The Price Spread Commission had the following to say with regard to the textile trade association:

'A field in which the trade association might perform useful service is in the promotion of proper standards in commercial practice, eliminating dishonest marking and labelling, and curbing unfair competitive practices.'"

15 Now, my lord, I commit up to that point we are [illegible] but the recommendation of another royal commission, which is, I submit, in the interests of the public.

The [illegible] Act, of course, [illegible] terms are very wide, curbing unfair trade practices. You have got to sit down and decide what practices are unfair and what are not.

20 MR. [illegible]:

MR. [illegible]: Does the language apply of the [illegible]?

MR. [illegible]: "A field in which the trade [illegible] might perform useful service is in the [illegible]" -- it was according with practices

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regard to the textile trade associations --

"'A field inwhich the trade association might perform useful service is in the promotion of proper standards in consumer goods"--

THE COMMISSIONER: That is alright.

MR. KELLOCK: "'--eliminating dishonest marking and labelling'"--

THE COMMISSIONER: Nothing dishonest is ever right.

MR. KELLOCK: "'-- and curbing unfair competitive practices'". If I am--

THE COMMISSIONER: People would not all agree what was unfair in that regard.

MR. KELLOCK: No, my lord. If my recollection of the evidence before that Commission is correct those three things were the subject matter of discussion there.

MR. McRUER: Oh yes, but you see what they dealt with and passed legislation in regard to the unfair competitive practices was in the case of a large organization reducing its prices so low as to squeeze out their competitors and ruin them and then have the field for themselves. That is 498.

MR. KELLOCK: It doesn't say anything about a large organization.

MR. McRUER: It would need to be a large organization to be able to afford to do it.

MR. KELLOCK: Not at all.

MR. McRUER: It doesn't suggest they were to agree on prices among themselves as elimination of

regard to the hostile trade control clause --

"A field inquiry the trade commission might perform would be wise in the broad sense of proper standards in consumer goods"--

MR. [illegible]: That is right.

MR. [illegible]: "Continuing to demand [illegible] quality".--

THE [illegible]: Nothing [illegible] is more right.

MR. [illegible]: "-- and quality [illegible] competitive practices". If I am--

MR. [illegible]: Perhaps we'd not all agree to [illegible] in that regard.

MR. [illegible]: No, my lord. I'm reminding [illegible] of the evidence taken that [illegible] in consumer those three things were the subject matter of discussion there.

MR. [illegible]: Oh yes, but you see what they said [illegible] competitive practices was in the case of a large organization reducing its prices so low as to squeeze out their competitors and then they are then have the field for themselves. That is [illegible].

MR. [illegible]: It doesn't say anything about a large organization.

MR. [illegible]: It would need to be a large organization to be able to afford to do it.

MR. [illegible]: Not at all.

MR. [illegible]: It doesn't suggest they were to agree or prices among themselves as claims that of

competition.

THE COMMISSIONER: That act did not repeal the Combines act, for instance. They are both there side by side and you have to divide the field between them.

MR. KELLOCK: You cannot sell too low for a wrong purpose, and when you come to the other statute you cannot sell too high.

THE COMMISSIONER: You have to navigate between Scylla and Charybdis.

MR. KELLOCK: I am going to try to show your lordship that is what we have done. Then, I come to the question of price stabilization, paragraph 10--

" The Canadian market for textile products is a comparatively small market and the levels of selling prices are more the result of individual negotiations than published information. This is not the case in the United States for example where daily trade papers with a wide circulation among mills and their customers give current prices and price changes on many yarns, fabrics and manufactured articles. The prices of products, when not published, can also be judged from the general price levels thus made known. In England, cotton and wool, yarn and cloth, are traded in the open market in Manchester and Bradford, in a somewhat similar way as wheat is traded on the Winnipeg Exchange. In addition the English trade papers publish current quotations

CONSUMERS.

The Council Member: That not did not repeal the Combines Act, for instance. They are left there side by side and you have to divide the field between them.

Mr. [illegible]: You cannot well too low for a tariff purpose, and when you come to the other extreme you cannot sell too high.

The Council Member: You have to navigate between Scylla and Charybdis.

Mr. [illegible]: I am going to try to show your Lordship that is what we have done. Then, I come to the question of price stabilization, paragraph 10-

" The Canadian market for textile products is a comparatively small market and the levels of selling prices are more the result of individual negotiations than published information. This is not the case in the United States for example where daily trade papers with a wide circulation among mills and their customers give current prices and price changes on many yarns, fabrics and manufactured articles. The prices of products when not published, can also be inferred from the general price levels thus made known. In England, cotton and wool, yarn and cloth, are traded in the open market in Manchester and Bradford, in a somewhat similar way as wheat is traded on the Winnipeg exchange. In addition the English trade journals publish average [illegible]

"on an extended range of products. Many of the exhibits filed by Mr. Hooper containing United States and English prices are based on the quotations published in these papers. The availability of this information in these countries would inevitably tend to minimize the possibility of mis-representation by buyers as to the prices which are being quoted.

The necessity for some attention being given to the matter of stabilization of prices was mainly due, according to the evidence, to the necessity of combating the effect produced by mis-representations on the part of buyers as to prices at which goods had been quoted to them by others. These misrepresentations during a period when industry was greatly depressed, when the prices of raw materials were fluctuating widely, when capacity to produce had overtaken demand, had the effect of unduly forcing down prices of certain lines to levels where they became in many instances not only non-profitable but below the level of cost. That the condition above mentioned was the moving force in bringing about the attempted stabilization of prices is substantiated in the evidence",

and I refer there particularly in that evidence to the full fashioned hosiery situation, worsted cloth and carpets, and I am going on to deal with them a little in detail, my lord.

" The situation existing is clearly portrayed as to worsted cloth in the letter dated 28th of March 1933 from J.G. Dodd to Douglas Hallam, part of Exhibit 765, which is set out at pages 11,040 and 11,041 of the evidence. The letter reads:

' I have your letter of the 25th instant and have been very much interested in reading the extracts attached to your letter relative to the Lancashire Cotton trade.

There is one principle which the author enunciates that I have always upheld, that is, that underselling does not gain anyone at any time or place, any additional business. It may temporarily benefit one concern, but it is a loss to another, and that is what I most seriously deplore in the Canadian woollen and worsted industry at the present time.

Since we had our original meeting to discuss this matter and try to bring Canadian mills together, conditions have become worse - some of the mills are selling goods at prices at which they must be making a terrific loss. I have done what I could on behalf of our own Company to try to better this condition, but apparently our efforts are not being met with in a sympathetic gesture by some of our members, they evidently prefer to go ahead and lose money rather than take steps to get the industry

ROBT. BRYDIE
Chartered Stenographic
Reporter
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The situation prevailing is exactly parallel
as to yarns and cloth in the letter dated 20th of
March 1922 from J.C. Good to Douglas Pallen,
part of Exhibit 700, which is set out at pages
11,040 and 11,041 of the evidence. The letter
reads:

" I have your letter of the 20th instant
and have been very much interested in reading
the extracts attached to your letter relative
to the Canadian Cotton Trade.

There is one principle which the author
enunciates that I have always upheld, that is,
that endeavouring does not gain anyone at any
time or place, any additional business. It
may temporarily benefit one concern, but it is
a loss to another, and that is what I most
seriously deplore in the Canadian woollen and
worsted industry at the present time.

When we had our original meeting to discuss
this matter and try to bring combination mills
together, conditions have become worse - some
of the mills are selling goods at prices at
which they must be making a tremendous loss.
I have done what I could on behalf of our own
company to try to better this condition, but
unfortunately our efforts are not being met with
a corresponding desire by some of the mills,
that invariably prefer to go ahead and lose
money rather than take steps to get the industry

"'back to its proper place'.

With price cutting below cost of production, it is inevitable that employees in industries where such conditions exist immediately suffer as there is pressure on the producer to reduce his costs of everything which is controllable, and the chief such item is, of course, wages. Accordingly, it is submitted that stabilization of prices so long as the price level is not excessive, is particularly in the interest of the employees in protecting the scale of wages paid and is in the interests of the community at large in maintaining the buying power of such employees. It is not in the interests of consumers that such conditions should be brought about nor are these conditions desired by buyers of textiles in other trades, including the retail trade. The evidence contains illustrations.

The situation is described by Mr. Thompson in his evidence as follows:

'Q. Apart from the desirability from the standpoint of the mills, do you know anything about the desirability or otherwise of these agreements from the standpoint of the buyers from the mills? A. The feeling amongst most buyers was that any time they felt there was not any agreement amongst the mills they became alarmed'".

THE COMMISSIONER: Just a moment; who was Mr. Thompson?

"Back to its proper place?

With price cutting below cost of production, it is inevitable that employees in industries were paid wholly going below [illegible] so there is pressure on the producer to reduce his costs of everything which is controllable, and the chief such item is, of course, wages. Accordingly, it is maintained that establishment of prices so long as the price level is not excessive, is particularly in the interest of the employees in protecting the scale of wages paid and is in the interests of the community at large in maintaining the buying power of such employees. It is not in the interests of consumers that such conditions should be brought about nor are these conditions desired by buyers of textiles in other trades, including the woollen trade. The evidence contains illustrations.

The situation is described by Mr. Thomson in his evidence as follows:

'Q. Apart from the desirability from the auction point of the mills, do you think anything would the desirability or otherwise of these auctions from the standpoint of the buyers from the mills? A. The trouble seemed most buyers was that any time they felt there was not any agreement amongst the mills they became alarmed.';

Commissioner: Just a moment; who was "M".

MR. KELLOCK: The president of the Canadian Silk Products Corporation, my lord.

"'Q. Why? A. For the reason that they were lost in their buying, they had no control of their buying. The price quoted today would look interesting to them, and tomorrow they would find a lower price quoted, and the result was that any time they felt there was no agreement or arrangement or stabilization of prices amongst the manufacturers they felt they were in a dangerous period of operation because no matter what price they paid today they felt that some other retailer was probably buying cheaper.

BY THE COMMISSIONER: Q. I assume that the purchasers of these goods are the retail trade.

A. Yes, the retail trade, my lord."

MR. McRUER: You do not suggest Mr. Thompson's business was being wrecked by competition, put in $48,000 and it is now two million.

MR. KELLOCK: Please don't interrupt quite so much.

"'BY MR. KELLOCK: Q. Have you had that view expressed to you, Mr. Thompson, at times?

A. We have had it openly expressed to us at certain times. When a certain buyer would hear that we were not in a price arrangement and that we were operating independently of the Association and other manufacturers.

Q. What would he say to you when he thought that was the case?

A. Well, they would express alarm or disgust some-

MR. HOWITT: The president of the Canadian Air Transport Commission, or Ford.

Q. Why [illegible] A. For the reason that they were lost in their bargain, they had no control of their buying. The price quoted them would look interesting to them, and however they could find a lower price quoted, and the result was that any time they felt there was no agreement or arrangement or stabilization of prices amongst the manufacturers they felt they were in a dangerous period of competition because no matter what price they paid today they felt that some other retailer was probably buying cheaper.

BY THE COMMISSIONER: Q. I assume that the owners of these goods are the retail trade.

A. Yes, the retail trade, my Lord.

MR. HOWITT: You do not suggest Mr. Ferguson's business was being wrecked by competition, put in $42,000 and it is now two million.

MR. HANSON: Please don't interrupt with an [illegible]

BY MR. HOWITT: Q. Have you had that [illegible] expressed to you, Mr. Ferguson, at times?

A. We have had it openly expressed to us at meetings there. [illegible]

Now that we were not in a price arrangement and that we were competing independently of the Associated Men and other manufacturers.

Q. Did it ever occur to you when he [illegible] that was the cause?

A. [illegible] they would express alarm or disgust

"'times with our mill for not co-operating.

Q. Disgust with you? A. At times we were rather unpopular with certain buyers for not co-operating with the other manufacturers.

Q. I see. The retailer wanted to feel when he bought from Gotham we will say, that his competitor was not going to be able to buy from you at a lower price? A. Quite.'

This evidence shows that not only were buyers fully aware of the attempts at price stabilization but very definitely desired it."

That evidence, I submit, my lord, shows very clearly why the persons in the retail trade would favour these things so long as the price was not unduly high, and I am going to deal with that.

THE COMMISSIONER: I have no doubt the retail trade, as you say there, each one would like to feel that his competitor was not getting anything cheaper than he was.

MR. KELLOCK: Yes.

MR. McRUER: The evidence is the retail trade continually was trying to buy lower and Mr. Mallam was having to intervene and plead with these manufacturers to maintain their agreements. Mr. Mallam said they fell down. The whole thing fell down because the manufacturers would not maintain the agreements so the retail trade must have been anxious to get them cheaper.

MR. KELLOCK: Not at all; my friend has brought up an important point, my lord, that no matter how

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"times with our bill for not co-operating.

L. Almost with your[illegible] L. At times we were rather unpopular with certain buyers for not co-operating with the other manufacturers.

L. I see. The retailer wanted to feel when he bought from Dutton he will say, that his competitor was not going to be able to buy from you at a lower price? A. Quite.'

This evidence shows that not only were buyers fully aware of the attempts at price stabilization but very definitely desired it."

That evidence, I submit, my Lord, shows very clearly why the persons in the retail trade would favour these things so long as the price was not unduly high, and I am going to deal with that.

The WITNESS: I have no doubt the retail trade, as you say Mr. [illegible], each one would like to feel that his competitor was not getting anything cheaper than he was.

Mr. [illegible]: Yes.

Mr. [illegible]: The evidence is the retail trade continually was trying to buy lower and Mr. Dutton was having to intervene and plead with these manufacturers to maintain their arrangements. Mr. Dutton said they fell down. The whole thing fell down because the manufacturers would not maintain the agreements so the retail trade must have been anxious to get their cheap[illegible]

Mr. [illegible]: Not at all; my friend has brought up an important point, my Lord, that no matter how

we tried, these manufacturers -- as they did try -- that no matter how the retailers as a whole wanted these things the manufacturers, who did say that they would co-operate, were continually falling away from this arrangement and the thing was in pieces all the time, and that was the reason for the new coming together from time to time and attempting to get going again, and your lordship will see in the exhibits dealing with full fashioned hosiery I think in the period from 1932 in March until about 1935 in September, when the last one was attempted there either -- I must not be held to this, but I think there are either five or six different agreements in that time, the reason being that the preceding one had fallen to pieces because they would not live up to it.

MR. McRUER: No, they increased the price from time to time.

MR. KELLOCK: I must be allowed to continue my argument without continual interruption from my friend.

THE COMMISSIONER: You say what is the reason?

MR. KELLOCK: I say the evidence shows the reason for the new one was that the preceding one had been departed from by some of those who had said they would co-operate in it, and it had fallen into disuse, and a new attempt was made and a new document was signed.

MR. McRUER: The evidence shows the price increased from time to time in these documents. The documents speak for themselves.

MR. KELLOCK: Quite so; the evidence is that the

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ve tried, those manufacturers -- so they did try -- that no matter how the metallers as a whole wanted these things the manufacturers, who did say that they would co-operate, were continually falling away from this arrangement and the thing was in chaos all the time, and that was the reason for we now coming together from time to time and attempting to get rain again, and your Lordship will see in the exhibits nothing with full freedom because I think in the [illegible] when the last one was attempted there at that -- I must not be held to this, but I think there was either five or six different agreements in that time, the reason being that the preceding one had fallen to chaos because they would not live up to it.

MR. MORDEN: No, they kept read the price from time to time.

MR. ANGLIN: I must be allowed to continue my argument without continual interruption from my friend.

THE COMMISSIONER: You say what is the reason

MR. ANGLIN: I say the evidence shows the reason for the new one was that the preceding one had been [illegible]ted from by some of those who had said they would co-operate in it, and it has fallen into chaos, and a new attempt was made and a new document was signed.

MR. MORDEN: The evidence shows the price kept from time to time in those documents. The documents speak for themselves.

MR. ANGLIN: Quite so; the evidence is that the

price increased and the evidence is also that the raw material cost increased. Paragraph 14, my lord--

"Price stabilization is accepted by the public as applicable in connection with many commodities, such as bread and milk, where prices of all producers are raised or lowered uniformly by agreement of the producers themselves."

THE COMMISSIONER: Fixed through agreements.

MR. KELLOCK: Through agreements; they are sometimes fixed by boards.

THE COMMISSIONER: The price of bread is fixed in many cases.

MR. KELLOCK: Well, that is --

THE COMMISSIONER: I am not talking about here.

MR. KELLOCK: In Ontario so far as I know I don't think there is any statutory basis for the fixing of bread prices.

THE COMMISSIONER: I think there is in England.

MR. KELLOCK: But there is in milk in Ontario.

MR. McRUER: There is a board in England, and provision made for certain rights of appeal if the parties are dissatisfied with the price of bread as fixed.

THE COMMISSIONER: But still it is fixed.

MR.McRUER: It is fixed by this board, and then may be appealed to another tribunal.

MR. KELLOCK: In Ontario the price of bread is fixed simply by the manufacturers themselves, apart altogether from any statutory device, and the common

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price increased and the evidence is also that the raw material cost increased. Therefore it, by law, "price equalization is recognized by the public as acceptable in connection with very essentials, such as bread and milk, where prices of all are reduced or lowered uniformly by reason of the producers themselves."

THE CHAIRMAN: Fixed through agreements.

MR. MCLEAN: Through agreements; they are nominations fixed by boards.

THE CHAIRMAN: The price of bread is fixed in many areas.

MR. [illegible]: Well, that is --

THE CHAIRMAN: I am not talking about here.

MR. [illegible]: In answer to for as I know I don't think there is any statutory basis for the fixing of bread prices.

THE CHAIRMAN: I think there is in Quebec.

MR. [illegible]: But there is in milk in Ontario.

MR. [illegible]: There is a board in Quebec, and provision made for certain areas of bread if the parties are dissatisfied with the price of bread as fixed.

THE CHAIRMAN: But still it is fixed.

MR. [illegible]: It is fixed by this board, and then may be appealed to another tribunal.

MR. [illegible]: In Quebec the price of bread is fixed since the manufacturers themselves, upon [illegible] device, and the common

price is increased from time to time, and it is raised or lowered half a cent or a cent as the case may be.

"It is submitted that there can be no reason for any distinction between such commodities and textiles"--

THE COMMISSIONER: You submit that? That is a very arguable question.

MR. KELLOCK: It all comes down --

THE COMMISSIONER: If you were to appear before any body of authority and ask to have a body created to fix the price of textiles you would have to elaborate your argument.

MR. McRUER: The price of bread is not protected in this country, is it?

MR. KELLOCK: I think perhaps the question of distance is--

THE COMMISSIONER: I doubt very much whether you would want to have a board fixing the price of textiles.

MR. McRUER: Is my friend asking for it? Mr. Dodd said he though it would be a fine thing. He supported this agreement. I said "should you and Mr. Hallam be the ones to decide what prices textiles are to be sold at?" He said "I think that is alright, but we will welcome an official of the government to sit in with us."

MR. KELLOCK: Yes.

THE COMMISSIONER: An observer.

MR. McRUER: Is that what my friend is asking for?

MR. KELLOCK: My lord, I find the Parliament of

Canada thought it would be an excellent thing, and insofar as the Parliament of Canada had legislative jurisdiction to deal with it they dealt with it, and your lordship will find that in Section 14 of the Dominion Trade and Industry Commission Act, chapter 59, 1935. Section 14 reads this way --

THE COMMISSIONER: That is the amendment to the Criminal Code, isn't it?

MR. KELLOCK: No, my lord, this is the Dominion Trade and Industry Commission Act. 498-A is the amendment to the Criminal Code. This is a different piece of legislation. This is the legislation that implemented one of the findings of the Price Spreads Commission, which was that such a board should be established, and section 14 --

THE COMMISSIONER: What chapter do you say?

MR. KELLOCK: Chapter 59.

THE COMMISSIONER: of 1935?

MR. KELLOCK: Yes, my lord; section 14 says:

"(1) In any case where the Commission"-- that is the Dominion Trade and Industry Commission -- "after full investigation under the Combines Investigation Act, is unanimously of opinion that wasteful or demoralizing competition exists in any specific industry, and that agreements between the persons engaged in the industry to modify such competition by controlling and regulating prices or production would not result in injury to or undue restraint of trade or be detrimental to or against the interest of the public, or where such agreements

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"exist and in the unanimous opinion of the Commission but for their existence wasteful or demoralizing competition would exist in any specific industry, the Commission may so advise the Governor in Council and recommend that certain agreements be approved.

(2) The Governor in Council may, if of opinion that the conclusions of the Commission are well founded, approve of any such agreement, and shall make regulations requiring the Commission to determine from time to time whether the agreement is resulting in injury to or undue restraint of trade or is detrimental to the public interest.

(3) The Commission shall require persons engaged in the industry to furnish full information relating to operations within the industry under the agreement and may at any time, of its own motion and in its absolute discretion, advise the Governor in Council to rescind the approval of the agreement and the Governor in Council may rescind the approval accordingly.

(4) In any case where the Governor in Council has approved an agreement under this section, no prosecution of a party to such agreement shall be instituted under the Combines Investigation Act or under sections four hundred and ninety-eight and four hundred and ninety-eight A or any other relevant section of the Criminal Code for an offence arising in the performance of such agreement, except with the consent of the Commission."

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markets and in the unanimous opinion of the Commission but for their evidence uncovered or demonstrating corrupt action would exist in any specific industry, the Commission may as advise the Governor in Council and recommend that certain agreements be approved.

(3) The Governor in Council may, if of opinion that the conclusions of the Commission are well founded, approve of any such agreement, and shall make regulations requiring the Commission to determine from time to time whether the agreement is resulting in injury to or undue restriction of trade or is detrimental to the public interest.

(3) The Commission shall require persons engaged in the industry to furnish full information relating to operations within the industry under the agreement and may at any time, of its own motion and in its absolute discretion, advise the Governor in Council to rescind the approval of the agreement and the Governor in Council may rescind the approval accordingly.

(4) In any case where the Governor in Council has approved an agreement under this section, or [illegible] in such agreement [illegible] instituted under the Combines Investigation Act or under sections four hundred and eighty-eight and four hundred and eighty-eight A or any other [illegible] [illegible] for an offence arising in the performance of such agreement [illegible] the Commission.

And there is a provision for setting up machinery, and so on, but the Supreme Court of Canada held, my lord, that was ultra vires, that particular section.

THE COMMISSIONER: Which section?

MR. KELLOCK: Section 14, the one I just read, and there was no appeal in the recent appeals.

THE COMMISSIONER: I was going to ask you that. That sounds to me a good deal like the Chamber of Commerce legislation.

MR. McRUER: It meant one of two things, anyway. It meant that the Governor in Council would approve of an agreement that was a criminal offence, and he could have no power to do that, or he would approve of one that was not a criminal offence, and if it was not a criminal offence they could go ahead and agree all they liked. It was a most meaningless section.

THE COMMISSIONER: What happened to it?

MR. KELLOCK: I say the Supreme Court of Canada held it ultra vires, and there was no appeal so it is out of the Statute although the rest of the Statute stands.

THE COMMISSIONER: In that case I would like to have the judgment of the Supreme Court on that.

MR. McRUER: It will be in that volume that Mr. Rene has got. They are all in there.

MR. KELLOCK: That is the Privy Council, not the Supreme Court.

MR. McRUER: Yes, that is right. It didn't go to

[illegible] there is a correction for setting up [illegible], [illegible] on, but the supreme court of [illegible] Bell, by [illegible] that [illegible] views, that [illegible] for [illegible].

The [illegible]: [illegible] question.

Mr. [illegible]: Section 14, the one I have read, [illegible] there has no effect in the present [illegible].

The [illegible]: I was going to ask you that. That sounds to me a good deal like the [illegible] of [illegible] legislation.

Mr. [illegible]: It meant one of two things, anyway. It meant that the Governor in Council would approve of an agreement that was a criminal offence, and he could have no power to do that, or he would approve of one that was not a criminal offence, and if it was not a criminal offence they could go ahead and [illegible] all they liked. It was a most [illegible] position.

The [illegible]: [illegible] proposed to it?

Mr. [illegible]: I say the Supreme Court of Canada held it [illegible] views, and there was no [illegible] so it is out of the [illegible] although the [illegible] [illegible].

The [illegible]: In that case I would like to have the judgment of the Supreme Court on that.

Mr. [illegible]: It will be in the [illegible] that we have got. They are all in there.

Mr. [illegible]: That is the Privy Council, not the Supreme Court.

Mr. [illegible]: Yes, that is right. It didn't go [illegible]

the Privy Council.

MR. KELLOCK: I read it, my lord, and the judgment on that particular section, as I recall it, was by the Chief Justice of Canada, and the ground, as I recall it, was that was a matter within the jurisdiction of the provinces.

THE COMMISSIONER: It sounded to me as you read it there -- it seemed a repetition to a large extent of the Chamber of Commerce legislation.

MR. KELLOCK: All I say about it, my lord, is that so far as the mind of Parliament was concerned --

THE COMMISSIONER: Yes, but they had no right to have that mind.

MR. KELLOCK: They had no right to have that mind.

THE COMMISSIONER: We will adjourn for a recess.

-- The Commission adjourned for a short recess.

(page 16852 follows)

-- On resuming at 12 P.M.

MR. McRUER: I have the reference in the Supreme Court to that section. Deals with Section 14, the first paragraph and that is all, and then goes on to deal with the other sections, Canadian Trade and Industry Act.

MR. KELLOCK: My lord, I wanted to refer at this point to a view that my friend expressed, and I think it affects his argument on this subject all the way through, but I hope I have got it down correctly for I see I wrote it down as my friend said it on February the 11th at 3.15 P.M. My friend said that he cannot imagine any reason why there should be any price fixed except for the purpose of raising prices. Now, I think I can suggest one and that would be to prevent the prices going lower.

THE COMMISSIONER: I suppose you might say raising or maintaining.

MR. KELLOCK: Well, my friend just said raising.

MR. McRUER: What is the date of that and the hour?

MR. KELLOCK: February 11th, 3.15 P.M., and it might well be for the purpose of maintaining ---

THE COMMISSIONER: Any fixing that you do would naturally fix it at minimum price.

MR. KELLOCK: Yes, and would be for the purpose of maintaining and preventing it going lower, not for the purpose of raising prices, as my friend puts it.

THE COMMISSIONER: Well, it is to prevent price from

-- on resuming at 12 P.M.

MR. MOWAT: I have the reference in the Supreme Court to that section. Deals with section 14, the first paragraph and that is all, and then goes on to deal with the other sections, Canadian Trade and Commerce Act.

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MR. KELLOCK: Well, my friend just said raising.

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MR. KELLOCK: February 11th, 3.15 P.M., and it might well be for the purpose of maintaining ---

THE COMMISSIONER: Any fixing that you do would naturally fix it at minimum price.

MR. KELLOCK: Yes, and could be for the purpose of maintaining and preventing it going lower, not for the purpose of raising prices, as my friend puts it.

THE COMMISSIONER: Well, it is to prevent prices fro

going lower. When you fix, of course you do not decrease - you fix. What you are fixing as a minimum.

MR. KELLOCK: Yes, but I understand myfriend's idea in fixing it involves a raising.

THE COMMISSIONER: A competitor does not care how much dearer his fellow competitor sells - that does not hurt him - it is how much cheaper.

MR. KELLOCK: In the second paragraph on page 7 I say: "The specious argument that the consumer derives nothing but benefit from the sale of commodities at prices however low and whether or not such prices have any relation to costs of production has been often advanced and its fallacy has often exposed. The argument was dealt with in the following language by Lord Haldane in his speech in the House of Lords, in the case of North Western Salt Limited, v. Electrolytic Alkalie Co. Limited." In these words:

"Unquestionably the combination in question was one the purpose of which was to regulate supply and keep up prices. But an ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business, or lower wages, and so cause unemployment and labour disturbance. It must always be a question of circumstances whether a combination of manufacturers in a particular

going lower. When you fix, of course you do not decrease - you fix. What you are fixing as a minimum.

MR. KNLLOCK: Yes, but I understand Mr Fisher's idea in fixing it involves a raising.

The Commissioner: I suppose that any man who quarter his fellow competitor sells - that does not mean - it is how much cheaper.

MR. KNLLOCK: In the second paragraph on page 7 I quote "The marketing scheme may be an excellent thing nothing but benefit from the sale of commodities at prices however low and whether or not such prices have any relation to costs of production has been often advanced and the fallacy has often exposed. The argument was dealt with in the following language by Lord Balfour in his speech in the House of Lords, in the case of North Eastern Dairy Limited, v. Electricity Commissioners, Ltd. In these words:

"Unquestionably the consideration in question was one the purpose of which was to regulate supply and keep up prices. But an ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business, or lower wages, and so cause unemployment and labour difficulties. It may slow, or prevention of development and extension of manufacture in a district

trade is an evil from a public point of view. The same thing is true of a supposed monopoly." And I do not cite that as a matter of law at all but as a matter of economics and I say that at the top of page 8:

"This case on its facts is not otherwise applicable as the relevant statute law of Canada is not in force in England."

It is pertinent here to refer to the leading case on this branch of the law, namely, Attorney General for Australia vs. Adelaide Steamship Co.

THE COMMISSIONER: That is the Coal Mines case?

MR. KELLOCK: Yes, my lord.

"The facts giving rise to this litigation were brought about by circumstances singularly similar to the circumstances already mentioned existing with regard to some lines of textile products in Canada during the depression years, when price stabilization was sought. The statute law in question in the Adelaide case has similar provisions to the relevant Canadian Statute already mentioned.

It is to be noted that while one of the agreements in question in the Adelaide case was held invalid by the Trial Judge and there was no appeal in regard to it, it became necessary for the Privy Council itself to review the decision with regard to this agreement."

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trade is an evil from a public point of view.

The same thing is true of a top coat monopoly.

and I do not cite that as a matter of law at all but as a matter of economics and I say that at the top of page 5:

"This case on its facts is not otherwise applicable as the relevant statute law of Canada is not in force in England."

It is pertinent here to refer to the leading case on this branch of the law, namely, Attorney General for Australia Vs. Adelaide Steamship Co.

THE COMMISSIONER: That is the best thing away, Mr. Collins (?), my lad.

"The facts giving rise to this litigation were brought about by circumstances singularly similar to the circumstances already mentioned relating [illegible] of [illegible] [illegible] the [illegible], [illegible] establishment was sought. The statute law in question in the Adelaide case has similar provisions to the relevant Canadian statutes already mentioned.

It is to be noted that while one of the grounds in question in the Adelaide case was held invalid by the trial Judge and there was no appeal in regard to it, it became necessary for the Privy Council itself to review the decision [illegible] [illegible]."

They had to do that to consider the other agreement which was in question in the appeal.

"Their lordships held that both agreements whether taken separately or together did not infringe the Statute in question."

Lord Parker of Waddington at page 796 says:

"It is however in their Lordships' opinion clear that the onus of showing that any contract is calculated to....enhance prices to an unreasonable ....."

MR. McRUER: You see, the wording of the Australian Act was "Intended to produce these results."

MR. KELLOCK: I have the Australian Act, if my friend will just permit me to present my argument I think I will cover the whole subject. If I leave anything out my friend can answer it.

".....that any contract is calculated to ..... enhance prices to an unreasonable extent will be on the party alleging it, and that if once the court is satisfied that the restraint is reasonable as between the parties this onus will be no light one."

Then at page 801:

"It was also strongly urged that in the term 'detriment to the public' the public means the consuming public, and that the Legislature was not contemplating the interest of any persons engaged in the production or distribution of

had to do that to consider the other agreement which was in question in the appeal.

"Their lordships hold that both agreements when taken separately or together did not infringe the statute in question."

Lord Parker of Waddington at page 795 says:

"It is however in their lordships' opinion clear that the onus of showing that any contract is calculated to....enhance prices to an unreasonable ....."

MR. MORROW: You see, the wording of the australian act was "Intended to produce these results."

MR. KELLOCK: I have the australian act, if my friend will just permit me to present my argument I think I will cover the whole subject. If I leave anything out my friend can answer it.

".....that any contract is calculated to ..... enhance prices to an unreasonable extent will be on the party alleging it, and that if once the court is satisfied that the restraint is reasonable as between the parties this onus will be so light ....."

Then at page 801:

"It should be strongly borne in mind, in the first place, that the 'restraint' is one which is' (it is) 'merely to some slight extent, and that an insignificant one, and that the restriction has not destroyed, or is intended to destroy, competition, if the agreement is one of consideration, it is necessary to

articles of consumption. Their Lordships donot take this view, but the matter is really of little importance, for in considering the interests of consumers it is impossible to disregard the interests of those who are engaged in such production and distribution. It can never be in the interests of the consumers that any article of consumption should cease to be produced and distributed, as it certainly would be unless those engaged in its production or distribution obtained a fair remuneration for the capital employed and the labour expended."

Then at page 809:

"There can be no doubt that the vend agreement was intended to preclude competition in the sense of underselling among its members, and by this means to raise and maintain the price of coal....

In the present case, however, it was proved that the prices prevailing when negotiations for this agreement commenced were disastrously low owing to the 'cut-throat' competition which had prevailed for some years.

It can never, in their Lordships' opinion, be of real benefit to the consumers of coal that colliery proprietors should carry on their business at a loss, or that any profit they make should depend on the miners' wages being reduced to a minimum. Where these conditions prevail,

articles of consumption. Their Lordships cannot take this view, but the matter is really of little importance, for in considering the interests of consumers it is impossible to disregard the interests of those who are engaged in such production and distribution. It can never be in the interest of the consumers that any article of consumption should cease to be produced and distributed, as inevitably would be unless those engaged in its production or distribution obtained a fair remuneration for the capital employed and the labour expended."

Then at page 804:

"There can be no doubt that the vend agreement was intended to prevent competition in the sense of undercutting among its members, and by this means to raise and maintain the price of coal....

In the present case, however, it was proved that the prices prevailing when negotiations for this agreement commenced were disastrously low owing to the 'cut-throat' competition which had prevailed the vend sought.

It can never, in their Lordships' opinion, be of real benefit to the consumers of coal that mining companies should have to sell at a loss, or that any profit they make should accrue to the miners' wages being reduced in a time

the less remunerative collieries will be closed down, there will be great loss of capital, miners will be thrown out of employment, less coal will be produced, and prices will consequently rise until it becomes possible to reopen the closed collieries or open other seams. The consumers of coal will lose in the long run if the colliery proprietors do not make ~~fia~~ fair profits or the miners do not receive fair wages. There is in this respect a solidarity of interest between all members of the public. The Crown, therefore, cannot in their lordships' opinion rely on the mere intention to raise prices as proving an intention to injure the public. To prove an intention to injure the public by raising prices the intention to charge excessive or unreasonable prices must be apparent."

Now, my lord, -

THE COMMISSIONER: According to my recollection of that case it also contains a good illustration of collective bargaining, does not it?

MR. KELLOCK: As between the employees?

THE COMMISSIONER: Between the miners and the ---

MR. KELLOCK: I do not recall that. I read it recently.

THE COMMISSIONER: That is my recollection. It was about 1898 or 1899.

MR. KELLOCK: This case? No, 1913.

tion is as commercially efficient will be closed down, there will be great loss of employment, miners will be thrown out of employment, less coal will be produced, and prices will accordingly rise until it becomes possible to reopen the closed collieries or open other ones. The consumers of coal will lose in the long run. The collieries proprietors do not make the fair profits or the miners do not receive their wages. There is in this respect a solidarity of interest between all classes of the public. The Crown, therefore, cannot in their lordships' opinion rely on the mere intervention by prime prices as providing an intervention to injure the public. To prove an intervention to injure the public by raising prices the intervention must be excessive or unreasonable prices must be charged."

Now, my lord, -

THE CHAIRMAN: According to my recollection of that case it also contains a good illustration of collective bargaining, does not it?

MR. ELDON: As between the employees?

THE CHAIRMAN: Between the miners and the ---

MR. ELDON: I do not recall that. I read it (reading):

"That is my recollection. It may have been my lord."

(Court adjourned, 3.45 p.m.)

THE COMMISSIONER: Before the war, anyhow.

MR. KELLOCK: Yes.

THE COMMISSIONER: I think it contains a good illustration of collective bargaining.

MR. KELLOCK: I may have overlooked it. Of course, I was not after that part.

THE COMMISSIONER: I commend it to Mr. Bearegard's attention.

MR. KELLOCK: Our Combines Act uses the language that Combines mean the joining of two or more persons having or designed to have the effect, which combination has operated, or is likely to operate.

Now, the Australian Legislation under which the Adelaide Steamship case was decided, which my friend says is not at all comparable, and I think I have authority which shows that it is authoritative on our Section 498, is the Australian Industrial Prevention Act, 1936.

THE COMMISSIONER: Is that in your Factum?

MR. KELLOCK: No, I have a special sheet. The case is in my Factum, and in the report of the case I have taken/--

THE COMMISSIONER: Well, it is the same case you refer to.

MR. KELLOCK: Yes, and this legislation has been in question in the case.

MR. McRUER: The Statute was subsequently amended to drop the word "intended" from it.

[illegible]

Mr. [illegible]: Yes.

THE COURT: I think it contains a good [illegible] of collective bargaining.

5 Mr. [illegible]: I may have overlooked it. If you [illegible] I was not after that part.

THE COURT: I commend it to Mr. Honeyman's attention.

Mr. [illegible] that Section 141 [illegible]

10 that combines some the joining of two or more persons having or designed to have the effect of combining [illegible] was operated, or is likely to operate.

Now, the Australian legislation under which the [illegible]

15 [illegible] was not at all comparable, and I think I have authority which shows that it is retroactive on one section and, is the Australian Industrial Reconciliation [illegible].

THE COURT: Is that in your pocket

Mr. [illegible]: No, I have a special case. The case is in my pocket, and in the report of the case have taken--

25 THE COURT: Well, it is the same case you refer to.

Mr. [illegible]: Yes, and this legislation was passed in [illegible].

[illegible]

30 [illegible]

THE COMMISSIONER: You mean the Australian Statute?

MR. KELLOCK: Our Statute.

MR. McRUER: The Australian Statute was amended just a year after this to drop that word "intended." The crux of that whole case was that they had to prove not only that they intended to raise the price but that they intended to injure the public.

MR. KELLOCK: That is what my friend says that this case has no application either to our Combines Investigation or our Combines Act. I have some very eminent authority to say my friend is wrong.

THE COMMISSIONER: You are dealing with two Statutes and both these are statutory---

MR. McRUER: The Simpson-Reid case says it does not apply.

MR. KELLOCK: My submission is that our language, has operated - that is not the language but, is likely to operate, is comparable to this language and it has been so held, comparable to the language in section 498 of the Code. Section 4, part 2, of this Statute, which is entitled "Repression of Monopolies:"

> "Any person who either is principal or as agent, makes or enters into any contract, or is or continues to be a member of or engages in any combination, in relation to trade or commerce with other countries or among the States,-

The CHAIRMAN: You mean the Australian Statutes.

Mr. KNIGHT: Our statutes.

Mr. [illegible] [illegible] a year after this to drop that word "intended." The crux of that whole case was that they had to prove not only that they intended to raise the price but that they intended to injure the public.

Mr. KNIGHT: That is what my friend says that this case has no application either to our Combines Investigation or our Companies Act. I have some very eminent authority to say my friend is wrong.

The CHAIRMAN: I am dealing with the statutes and even these are so loosely---

Mr. [illegible]

Mr. KNIGHT: My suggestion is that our language has operated - that is not the language but, is likely to operate, is comparable to this language and it has been so held, comparable to the language in section 424 of the Code. Section 4, part 2, of this statute, which is entitled [illegible]

"Any person who either is principal or as agent, menge or abets into any one street, or is or continues to be a member of or engages in any combination, in relation to trade or commerce with [illegible] or more, the

Price,-

"(a) with intent to restrain trade or commerce to the detriment of the public; or

(b) with intent to destroy or injure by means of unfair competition any Australian Industry the preservation of which is advantageous to the Commonwealth, having due regard to the interest of producers, workers and consumers, is guilty of an offence."

And then Section 7:

"Any person who monopolizes or attempts to monopolize or combines or conspires with any other person to monopolize any part of the trade or commerce with other countries or among the States with intent to control to the detriment of the public the supply or price of any service, merchandise or commodity is guilty of an offence."

Now, my lord, the Adelaide Steamship case has been considered in a good number of subsequent cases in our own courts and I happened to come across a decision of your lordship and I just want to recall your lordship's judgment now. It is the case of Saskatchewan Cooperative Wheat Producers Vs. Zorowski, reported in 1926, 3 Dominion Law Reports at page 810. At page 839 your lordship said:

"I do not think Section 498 of the Code....."

I do not know whether your lordship recalls the circumstances.

"(a) with intent to restrain trade or commerce to the detriment of the public; or

(b) with intent to unduly prejudice or destroy the business of any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interest of producers, workers and consumers, is guilty of an offence."

Also then provides:

"Any person who monopolises or attempts to monopolise or combines or conspires with other persons to monopolise any part of the trade or commerce with other countries or among the States with intent to control to the detriment of the public the supply or price of any service, merchandise or commodity is guilty of an offence."

Now, my Lord, the Adelaide Steamship case has been considered in a good number of subsequent cases in our own courts and I [illegible] [illegible] of your Lordship and I [illegible] [illegible] ship's judgment now. It is the case of Hawkesbury Co-operative Meat Producers Vs. Gorman, reported in 1926, S Dominion Law Reports at page 634. At page [illegible] Jayanis said:

"[illegible] Bank Section 666 of the Code....."

I do not mean [illegible] [illegible] [illegible]

THE COMMISSIONER: Yes, the Saskatchewan Wheat Pool was suing one of its members for having broken ~~its~~ his contract with the Pool.

MR. KELLOCK: To sell his out-put to the Pool exclusively.

THE COMMISSIONER: Not sell but to deliver to the pool, to be sold by the pool, and then sued him and he raised this defence, that the contract was in restraint of trade, etc.

MR. KELLOCK: Your lordship said at page 839:

"I do not think Section 498 of the Code operates to affect the legality of the contract. The principles to be applied in dealing with the legality of this and similar agreements in the light of penal prohibitions are discussed at length in Attorney General vs. Adelaide Steamship Company."

"Section 498 of the Criminal Code prohibits among other things combines and agreements, the intention of which is undoubtedly to limit or prevent the production of any commodity or competition in its sale, or unreasonably to enhance its price."

"Undoubtedly" and "unreasonably" are both in italics.

THE COMMISSIONER: Is the Code still the way I quoted there?

MR. KELLOCK: Yes, my lord, it has been in that condition, oh, certainly, since 1926.

THE COURT: Yes, the defendant [illegible] was asking one of its men-to for having [illegible] business with the Pool.

MR. [illegible]: To sell his out-put to the Pool exclusively.

MR. [illegible]: Not sell but to deliver to the pool, to be sold by the pool, and then sued him and [illegible] raised this defense, that the contract was in restraint of trade, etc.

MR. KORNER: Your honorable said at page 308:

"I do not think section 498 of the Code operates to affect the legality of the contract. The principles to be applied in dealing with the legality of this and similar agreements in the light of penal prohibitions are discussed at length in Attorney General vs. Adriatic Steamship Company."

"Section 498 of the Criminal Code prohibits [illegible] the intention of which is undoubtedly to limit or prevent the production of any commodity or competition in its sale, or unreasonably to enhance its price."

"Undoubtedly" and "unreasonably" are born in Italics.

THE CHAIRMAN: Is the Code still the law [illegible]

MR. [illegible]: Yes, so long, it has been in that [illegible]

And at page 838, your lordship in dealing with the specific agreement before the Court there said:

"I can see nothing either in the object of the Association or in the covenants entered into by the defendant under his contract which can be said to be detrimental to the legitimate interests of the public. It is true that the members of this Association aim to secure better prices for their wheat but they intend to do this by cooperative marketing which they believe will lessen or eliminate speculation in their commodity and the consequent fluctuations in the price which have occasioned losses in the past. There is no suggestion that they will endeavour to fix the price unduly high or even to fix it at all."

And of course what I am referring to is that there is "no suggestion that they will endeavour to fix the price unduly high or even to fix it at all."

THE COMMISSIONER: You cannot go so far as to say "or at all".

MR. KELLOCK: No, I cannot. I do not attempt to do that. I want to return to this a little later on, but it is in the same subject matter.

Paragraph 15: It is to be borne in mind that whatever the result of attempted price stabilization in any section of the industry with regard to prices,

and at page 328, your Lordship. In dealing with the specific agreement before the Court you said:

"I can see nothing either in the object of the association or in the covenants entered into by the defendant under his agreement which can be said to be detrimental to the legitimate interests of the public. It is true that the members of this association aim to secure better prices for their wheat but they intend to do it by cooperative marketing which they believe will lessen or eliminate speculation in their commodity and the consequent fluctuations in price which have occasioned losses in the past. There is no suggestion that they will endeavour to fix the price unduly high or even to fix it at all."

And of course what I am referring to is that there is "no suggestion that they will endeavour to fix the price unduly high or even to fix it at all."

THE CHIEF JUSTICE: You cannot go so far as to say "at all".

MR. FOLLOWS: No, I cannot. I do not attempt to do that. I want to return to this a little later on, but it is in the same subject matter.

Paragraph 15: It is to be borne in mind that what-

competition in quality and service continued unregulated."

And I should like to pause there just for a moment to point out that in an article ---

MR. McRUER: That is not true.

MR. KELLOCK: That in articles such as are produced by the Textile Industry it is all very well to say that for the same article - we will say of the same price - you can provide against differentiation from the standard of the article set down but it is a very easy thing - and perhaps part of the reason why these agreements, as the evidence shows, were departed from from time to time - it is a very easy thing for one manufacturer to improve the quality of that article very slightly, or to some extent. He sells at the common price but it is a better article and that strikes at the basis of the whole thing. And the evidence is that the quality and the workmanship of one mill is not the same as the other, and while the price was settled on some of those articles, competition in the quality of the article produced by the various mills and in the service which that mill gave in the way of deliveries, etc. continued, and those are very material things in selling and marketing merchandise.

MR. McRUER: That is not accurate because the evidence shows there was objection taken that certain mills were giving better qualities than the regulations called for, thereby breaking the agreement.

competition in quality and service continued unregulated."

and I should like to pause there just for a moment to point out that is an article ---

MR. MOODEN: That is not true.

MR. MILLICAN: That in articles such as are produced by the Textile industry it is all very well to say that for the same article - we will say of the same price - you can provide against differentiation from the standard of the article set down but it is a very easy thing - and perhaps part of the reason why these agreements, as the evidence shows, were departed from from time to time - it is a very easy thing for the manufacturer to improve the quality of that article very slightly, or to some extent. He sells at the common price but it is a better article and that strikes at the basis of the whole thing. But the evidence is that the quality and the workmanship of one mill is not the same as the other, and while the price was settled on some of those articles, competition in the quality of the article produced by the various mills and in the service which that mill gave in the way of deliveries, etc. continued, and those are very material things in selling and marketing merchandise.

MR. MOODEN: That is not accurate because the evidence showed there was competition among certain mills were giving better qualities than the regulation

MR. KELLOCK: What evidence are you referring to?

THE COMMISSIONER: You mean to say there were regulations whereby ---

MR. McRUER: They specifically said these shall be of certain constructions and there was evidence that certain mills were putting better constructions at the same price into the articles and that was a breach of the agreement.

THE COMMISSIONER: Was it makingit a different article?

MR. McRUER: No, making it a better article, and that was the breach of the agreement.

MR. KELLOCK: Now, that is my friend's interpretation but what the documents ---

THE COMMISSIONER: It depends on what the evidence does say. You say here absolutely that"Competition in quality and service continued unregulated."

MR. KELLOCK: Yes.

THE COMMISSIONER: Now, is that a fact?

MR. KELLOCK: Yes.

MR. McRUER: The Hosiery Agreement specifies the thread they were to be made of . I think you will agree withme that the evidence shows---

MR. KELLOCK: I do not agree at all.

THE COMMISSIONER: We had better see the evidence.

MR. KELLOCK: I want to make my point clear, apart from the evidence, what my friend is talking about when he says these documents excluded competition

ROBT. BRYDIS
Official Reporter
MONTREAL CANADA

MR. MELLOR: Does evidence are you referring to?

THE COMMISSIONER: You mean to say there was [illegible]

MR. MORGAN: They specifically said there shall be of certain construction and there was evidence that certain mills were putting better constructions at the same price into the articles and that was a breach of the agreement.

THE COMMISSIONER: Was it making a different article?

MR. MORGAN: No, making it a better article, and [illegible] the price of the agreement.

MR. MELLOR: Now, that is my friend's interpretation [illegible]

THE COMMISSIONER: It depends on what the evidence does say. You say here absolutely that competition in quality and service continued unregulated."

MR. MELLOR: Yes.

MR. MORGAN: The Hosiery agreement specifies the terms they were to be [illegible]. I think you will agree without that the evidence shows---

MR. MELLOR: I do not agree at all.

[illegible]

MR. [illegible] I may be [illegible]

From the evidence, what my friend is making about

and quality. In my submission that is not so. What the documents do, they describe the article as being of such and such construction, but my submission is that notwithstanding that it is quite possible in connection with textile articles to improve the quality, to improve the workmanship, so that while ---

THE COMMISSIONER: You mean without changing the construction?

MR. KELLOCK: Yes, and therefore you are giving ---

THE COMMISSIONER: That is the evidence?

MR. KELLOCK: Yes, my lord. I am going on to refer to that. Then in addition to quality there is the question of service, that if I am a manufacturer and I give my customer better service in delivery and that sort of thing, notwithstanding the price is common, I can do a better business on account of the service which I give.

THE COMMISSIONER: Yes, that is rather vague in my mind. Does your agreement curtail quality as well as price?

MR. KELLOCK: No, all it does ----

THE COMMISSIONER: MR. McRuer says it does. You say it does not.

MR. McRUER: I have the Hosiery Agreement before me, and I think it was in retard to the knitting yarn that the letters were written objecting they were

making better quality. In regard to the Hosiery Agreement it gives:

"6 thread not finer than 42 gauge, cotton top and foot.

4 thread not finer than 42 gauge,

7 thread not finer than 39 gauge, cotton top and foot.

7 thread not finer than 42 gauge, cotton top and foot,--"

THE COMMISSIONER: These are different classes, are they, with different prices?

MR. McRUER: Constructions with different prices.

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THE COMMISSIONER: Now then, could a manufacturer work up a quality on any one of these constructions without getting into the next higher construction?

MR. KELLOCK: Yes, my lord, I have the evidence.

MR. McRUER: I will look up the evidence where the letter is in. I remember making ---

THE COMMISSIONER: We had better be very accurate on that.

MR. KELLOCK: I would like to refer your lordship to the evidence I had in mind, page 11264, Mr. Thompson, Canadian Silk Products, Line 9 to the following page at line 10:

"Q. So that you were willing to have gone in on the arrangement, Mr. Thompson, if they had done away with the differential between branded and unbranded? A. Provided there was a 100 per cent agreement.

Q. Provided there was a 100 per cent agreement. Then if there were a 100 per cent agreement there would be no competition whatever in Canada in full fashioned hosiery.

MR.KELLOCK: Is not that a hypothetical question?

THE WITNESS: There would always be competition because hosiery is really a style article.

BY MR. McRUER: Oh yes, but outside of the question of style there would be no price competition

work up a quality on any one of these constructions without getting into the best higher constructions?

MR. MILLSON: Yes, my lord, I have the evidence.

MR. MOWAT: I will look up the evidence where the latter is in. I remember saying ---

THE COMMISSIONER: We had better be very accurate on that.

MR. MILLSON: I would like to refer your lordship to the evidence I had in mind, page 11804, Mr. Thompson, Canadian Silk Products, line 9 to the following page at line 10:

". so that you were willing to have gone in on the arrangement, Mr. Thompson, if they had done away with the differential between counted and uncounted? A. Provided there was a 100 per cent agreement.

Q. Provided there was a 100 per cent agreement. Then if there were a 100 per cent agreement there would be no competition whatever in Canada in full fashioned hosiery.

MR. MILLSON: Is not that a hypothetical question?

THE WITNESS: There would always be competition because hosiery is really a style article.

MR. MOWAT: Oh yes, but outside of the

A. Price comp tition? You would have a variation in prices on the same construction, or a variation of value on the same construction."

THE COMMISSIONER: Now, he did not mean have a variation in prices on the same construction.

MR. KELLOCK: No, he means a differentiation in quality, he makes that clear.

THE COMMISSIONER: His "or" is to correct what went on before.

MR. KELLOCK: Yes, that is right.

"An article that sold for $6 a dozen...."

And these articles described at $6. - you cannot fix a price until you describe the article:

"An article that sold for $6 a dozen, we will say, by one mill would not have the same value as an article selling for $6 a dozen by another mill.

Q. But as far as the price on the various hosiery was concerned, it would be about the same?

A. The so-called construction would be the same, but then again the dominating factor is style plus grade, the quality of the finished article. In other words, the production of hosiery carries more seconds or defectives,....."

THE COMMISSIONER: This, of course, goes down to another classification.

MR. KELLOCK: But he comes back to it:

"....or a greater portion of its production

Prices comp titions? You would have a variation in prices on the same construction, or a variation of value on the same construction."

THE COMMISSIONER: Now, he did not mean have a variation in prices on the same construction.

MR. HALLCOX: No, he means a differentiation in quality, he makes that clear.

THE COMMISSIONER: His "or" is to connect what was on before.

MR. HALLCOX: Yes, that is right.

"An article that sold for $6 a dozen...."

And these articles described at $6. - you cannot fix a price until you describe the article:

"An article that sold for $6 a dozen, we will say, by one mill would not have the same value as an article selling for $6 a dozen by another mill.

But as far as the price on the various machinery was concerned, it would be about the same.

But then again the dominating factor is style and grade, the quality of the finished article. In other words, the production of machinery carries no guarantee of quality....."

[illegible] machinery [illegible]

[illegible] but he [illegible] back to it:

"..... a greater portion of the machinery

ROBT. BRYDIE
CHARTERED STENOGRAPHIC
REPORTER
TORONTO C - CANADA

is defective, as high as 60 per cent. seconds, then in other industries.

Q. But this agreement was in respect to firsts, was it not? A. The standard of firsts of one mill does not compare with the standard of firsts of another mill."

MR. McRUER: Now, I have the letter of reference. It is quoted at page 344 of my Brief and it is Exhibit No. 587, and it is a letter from the Guelph Carpet and Worsted Spinning Mills to Major Hallam dated the 15th of January, 1935, and it reads:

"Replying to your esteemed letter of the 11th inst., we are giving you herewith price lists of the hand knitting yarns we make, along with the quality of top used in each line, and the prices both for the retail and wholesale trades."

And then sets out as to the Scotch fingering skeins and Nymph fingering - balls:

"We hardly think this information will cover the point you have in mind, and we would suggest that every manufacturer be asked to send to your office a sample of every quality they make, with a number attached to each sample, and then a committee of two members should be appointed to examine the types and determine the quality of top in each type. By doing this the criticism that some manufacturers are actually making yarns from a finer quality of top than the brand calls for, could be readily checked."

Now, that is that they are making finer yarns than the brand on their list calls for.

THE COMMISSIONER: Who is that letter from?

MR. McRUER: It is from Quarmby of the Guelph Carpet and Worsted Spinning Mills to Major Hallam.

Mr. MORRIS: Now, I have the letter of reference. It is quoted at page 344 of my Brief and it is Exhibit No. 387, and it is a letter from the Dwelgh Carpet and Worsted Spinning Mills to Major Mellon dated the 16th of January, 1936, and it reads:

" Replying to your esteemed letter of the 11th inst., we are giving you herewith price lists of the Head Matching Yarns we make, along with the quality of top used in each line, and the prices both for the retail and wholesale trades."

and then sets out as to the Scotch Fingering skeins and Hyarph fingering - balls:

"We hardly think this information will cover the point you have in mind, and we would suggest that every manufacturer be asked to send to your office a sample of every quality they make, with a number attached to each sample, and then a committee of two members should be appointed to examine the types and determine the quality of top in each type. By doing this the criticism that some manufacturers are actually making yarns from a finer quality of top than the brand calls for, could be readily checked."

Now, that is that they are making finer yarns than the brand on their list calls for.

The Commissioner: Who is that letter from?

Mr. MORRIS: It is from Dwelgh Carpet and Worsted Spinning Mills to Major Mellon.

Mr. Hallam was asked about it at page 8158:

"That is, that some manufacturers were cheating by making them a little bett r than the brand called for, is that it? A. I would not say that.

Q. That is what the criticism was - some fellows were making them a little better than they ought to be according to some arrangement apparently?

A. I could not be surprised if that was the case.

Q. Where is your letter of the 11th instant?

A. I don't know. I think we have a file on that some place.

Q. I would certainly like to have that because it amazed me that there should be criticism by someone that manufacturers are making yarn of finer quality of top than the brand called for?

A. I think my letter asked for some information as to their prices on yarns.

Q. Yes, but what I am getting at --- A. And they hadmade the suggestion to me that we have a committee of two people look at these things when they come in.

Q. For the purpose of finding out? A. Yes,.

Q. That is, that they would send in their yarn and then they would be examined by a committee to find out if some fellow had not been cheating them by making his a little better than they were?

A. The suggestion was that they would be examined- that was the suggestion made to me by the Guelph Carpet.

CANADA

Mr. Hallam was asked about it at page 6130:

"Q. Not some manufacturers been producing by making them a little worse than the brand co[illegible] for, is that it? A. I would not say that.

Q. That is what the criticism was - some fellows were making them a little better than they ought to be according to some arrangement apparently?

A. I could not be surprised if that was the case.

Q. Where is your letter of the 11th instante?

A. I don't know. I think we have a file on that some place.

Q. I would certainly like to have that because it seemed me that there should be criticism by someone in t manufacturers are making yarn of finer quality of top than the brand called for?

A. I think my letter asked for some information as to their prices on yarns.

Q. Yes, but what I am getting at --- A. and they indeed the suggestion to be that we have a committee of two people look at these things when they come in.

Q. For the purpose of finding out? A. Yes.

Q. That is, that they would send in their yarn and then they would be examined by a committee to find out if some fellow had not been cheating the by making it a little better than they were?

A. The suggestion had that they would be [illegible]

"Q. Who was it that laid down the standard?

A. I think that is laid down in their price lists, I think.

Q. Oh, it must have been something far more comprehensive than that - it must have been the standard that was laid down in your price list that you sent out? A. I think we have another file on this, Mr. Berry, some place.

Q. I would like to get it.

MR. BERRY: It is not here.

THE WITNESS: I am not certain I think most of those companies issue a printed price list and I think I have correspondence sending them in.

Q. Oh, they could look after themselves?

A. Yes.

Q. And they would certainly. I cannot see what business it was of the Guelph Carpet Company, if the Toronto Carpet Company were making a brand a little better than the brand called for unless there was some agreement among them as to price?

A. Well, the suggestion made in his letter was not carried out. I mean, I cannot be responsible...

He changes that.

MR. KELLOCK: Yes, was not carried out.

MR. McRUER: No, he means I cannot be responsible. We will read his whole answer:

"I cannot be responsible for the suggestion that was made by the Guelph Carpet and Worsted Spinning

"Q. Who was it that laid down the standards?

A. I think that is laid down in their price lists, I think.

Q. Oh, it must have been something far more convenient than that - it must have been the standard that was laid down in your price list that you sent out? A. I think we have another file, Mr. Chairman, some place.

Q. I would like to get it.

Mr. BERRY: It is not here.

THE CHAIRMAN: I am not certain I think most of those companies issue a printed price list and I think I have correspondence sending them in.

Q. Oh, they could look after themselves?

A. Yes.

Q. And they would certainly. I cannot see what business it was of the Dunlop Carpet Company, if the Toronto Carpet Company were making a trump a little better than the brand called for unless

A. Well, the suggestion made in his letter was not carried out. I mean, I cannot be responsible for changes that.

Q. BELLOCK: Yes, was not carried out.

A. BERRY: No, he means I cannot be responsible.

"Q. Is it possible that the Dunlop Carpet and Linoleum Company

Q. Yes, I presume it is possible.

Mills.

Q. No, we want to get what was going on, why they should write to you and why there should be a complaint. In Exhibit number 573 which was this list which you recollect was marked "Effective from January 1st,1936"? A. Right.

Q. And which was a schedule of prices that had been sent out by you, and it gives the basis of the tops, for instance, 46s? A. Right.

Q. And we have 56s in there and 60s in there and 64s as mentioned in Exhibit 587?

A. That is right.

Q. Now, that was sent out as something that was to be effective from that date and it replaced one that had been out before? A. Correct.

Q. Then, we have the Guelph Carpet & Worsted Spinning Company coming along and making this statement to you 'We hardly think this information will cover the point you have in mind, and we would suggest that every manufacturer be asked to send to your office a sample of every quality they make, with a number attached to each sample, and then a committee of two members should be appointed to examine the types and determine the quality of top in each type. By doing this the criticism that some manufacturers are actually making yarns from a finer quality of top than the brand called for, could be readily checked.'

Hight.

Q. No, we want to get what was going on, why they should write to you and why there should be a complaint. In English number 273 which was this list which you recollect was marked referring to January 1st, 1922? A. Right.

Q. And which was a schedule of goods that had been sent out by you, and it gives the details of the sale, for instance, 4bay A. Right.

Q. And we have 5ds in threes and 5ds in threes and 6ds as mentioned in exhibit 273?

A. That is right.

Q. Yes, that was sent out as something that was to be effective from that date and it replaced one that had been sent before? A. Correct.

Q. Then, we have the English Carpet & Textile Company Company coming along and making this observation to you "a nearly this a this information will cover the point you have in mind, and we would suggest that every manufacturer be asked to send to your office a sample of every quality they make, with a number attached to each sample, and then a committee of two members should be appointed to examine the types and determine the quality of top in each type. By doing this the criticism that some manufacturers are actually making yarns from a finer quality of top than the brand called for, would be readily checked.

A. That was the suggestion of the Guelph Carpet and Worsted Spinning Mills, and was not carried out.

Q. Why in the world should there be any criticism in relation to a manufacturer making goods a little finer than the brand called for?

A. Could I just ask you, what connection has this memorandum of January 23d with the letter of January 15th?

Q. What reference? A. Yes, what connection.

Q. Because this bulletin lays down certain prices which are to be charged for certain qualities made from certain tops and the letter criticises that some of the manufacturers are getting around that by making them a little finer?

A. I think the type of yarns--

THE COMMISSIONER: Pardon me, what about the dates? The question of dates was mentioned.

MR. McRUER: Well, the bulletin is as of January 23rd, 1936. A. And the letter is January 15, 1935.

Q. But the point is this bulletin simply replaces one that was previously in effect by a rise in the price of 5 cents. It is stated there and you have said there was one in effect but it was just altered upwards.

A. The point in issue is this, my lord that the types of yarn referred to in the letter of January 15t are not referred to in the bulletin of January 21st.

A. That was the suggestion of the Dental Groups and worsted spinning mills, and was not carried on.

Q. Why in the world should there be any criticism in relation to a manufacturer making goods a little finer than the board called for?

Q. Could I just ask you, what connection has this memorandum of January 22d with the letter of January 16th?

A. Well relevant.

Q. Yes, that connection.

A. Because this bulletin lays down certain prices which are to be charged for certain qualities made from certain tops and the letter criticizes the some of the manufacturers are getting around that by making them a little finer?

A. I think the type of yarns--

THE COURT ADJOURNED: Pardon me, start about the dances? The question of dates was mentioned.

MR. MORSER: Well, the bulletin is as of January 22nd, 1919. A. And the letter is January 16, 1919.

Q. But the point in this bulletin simply replaces one that was previously in effect by a rise in the price of 5 cents. It is stated there and you have said there was one in effect but it was just slightly different.

Q. The point is there is this, my dear sir, the type of yarn referred to in the letter of January 16th was not referred to in the bulletin of January 22nd.

Q. Yes, they are? A. Excuse me, you say so, but it is not true like a good many of your statements.

Q. Well, if you want to be impudent and say many of my statements are not true I may have some comments to make about what you have said here, and you are under oath?

A. I am sorry, but you made a statement that is not true."

Then I regard that as a bit of impudence.

MR. KELLOCK: And I regarded your retort as a bit of impudence. It is only an interchange.

MR. McRUER: My friend persists in being disagreeable.

THE COMMISSIONER: Well, we had better have lunch now.

-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

Q. [illegible], they were? A. Excuse me, you say no, but it is not true like a good many of your [illegible].

Q. Well, if you want to be impudent and say many of my statements are not true I may have to make comments to make about what you have said here, and you are under oath?

A. I am sorry, but you made a statement that is not true."

Then I repeated that sort bit of impudence.

K. [illegible]: And I regarded your report as a bit of impudence. It is only an interchange.

Mr. [illegible]: My friend persists in being disagreeable.

THE COMMISSIONER: Well, we had better have lunch now.

-- The Commission adjourned at 12.30 p.m. to resume at 2.30 p.m.

-- On resuming at 2.30 p.m.

MR. KELLOCK: My lord, the matter in connection with yarns to which my friend referred just before the adjournment furnishes just another illustration of the point that I was on. That is, after you specify an article, there is still competition in quality, and the burden of the complaint of the Guelph Company was that there was that competition and they wanted to eliminate it, and they made the suggestion how it could be brought about, by having a committee to determine quality and so on; but that never was done. Let us take full fashioned hosiery to illustrate the point a little more fully, my lord. If one takes, for instance, Exhibit 363, which is one of the memoranda, and if you take the specification of one class of hosiery dealt with there called 4-thread not finer than 42 gauge -- that is I believe the specification -- the price at which that is to be sold branded and unbranded is set out. That is the total description of the article. Now 4-thread means the size of the thread; 42-gauge means the number of stitches around; 42-gauge means that there will be 42 stitches in three inches. If you go completely around the stocking there may be more than three inches and more than 42 stitches, but 42-gauge means 42 stitches in three inches, and that stocking then is a stocking made of size 4 thread in which there will be 42 stitches

-- in resuming at 8.00 p.m.

MR. ADDISON: My Lord, the matter in connection with yarns to which my friend referred just before the adjournment furnishes just another illustration of the point that I was on. That is, after you classify an article, there is still association in quality, and the burden of the complaint of the Russian Company was that there was that association and they wanted to eliminate it, and they made the suggestion how it could be brought about. By having a committee to determine quality and so on; but that never was done. Let us take that tendency to illustrate the point a little more fully my Lord. If one takes, for instance, Exhibit 3a, which is one of the memoranda, and if you take the specification of one class of hosiery dealt with there called 4-thread not finer than 42 gauge -- that is I believe the specification -- the price at which that is to be sold brought and auctioned is set out. That is the total description of the article. Now 4-thread means the size of the thread 42-gauge means the number of stitches around; 42-gauge means that there will be 42 stitches in three inches. If you go completely around the stocking there may be more than three inches and more than 42 stitches, but 42-gauge means 42 stitches in three inches, and that accordingly then is a stocking made of size 4 thread in which there will be 42 stitches

in three inches. Now take the variations that can be made in the article within the limits of that description. You have, for instance, the quality of the raw silk. Nothing is said in the description about the quality of the raw silk that is to be used by these manufacturers, and of course there is a wide variety in qualities.

In the Dominion Bureau of Statistics publication in which they deal with the price index they list five qualities of raw silk.

THE COMMISSIONER: There are five qualities in the 42's ?

MR. KELLOCK: Yes, they list five qualities which they keep track of. There are many more, but they only keep track of five for the purposes of their indices. That is one variable, which of course is a very important one.

Again, the various manufacturers can, for want of a better word, scrimp on the size. That is, one manufacturer may not have as many stitches in his stocking, or he might not have a stocking of the same length. One manufacturer might make a shorter stocking, and another a longer one. One might make a stocking which would be more desirable on the limbs. So there is competition there.

Then also in the matter of decoration. One form of decoration is picot edging. That is a fancy edge around the top of the stocking. I see that the edges of the curtains on the windows of this room

in terms income. How true the variations that are made in the article within the limits of that description. You know, for instance, the quality of the raw silk. Nothing is said in the description about the quality of the raw silk that is to be used by these manufacturers, and of course there is a wide variety in qualities.

In the Dominion Bureau of Statistics publication in which they deal with the price index they list five qualities of raw silk.

MR. CHARLTON: There are five qualities in the silk?

MR. HARVY: Yes, they list five qualities which they keep track of. There are many more, but they only keep track of five for the purposes of their indices. That is one variable, which of course is a very important one.

Again, the various manufacturers are, for want of a better word, dealing on the side. That is, one manufacturer may not have as many stitches in his stocking, or he might not have a stocking of the same length. One manufacturer might make a shorter stocking, and another a longer one. One might make a stocking which would be more durable on the limbs, so there is competition there.

There also in the matter of decoration. One type of decoration is plain seaming. That is a fancy seam across the top of the stocking. I see that the

are straight, but this picot edging is a kind of scalloped or fancy edge that might be put on.

THE COMMISSIONER: That could be put on without putting the product outside of the class ?

MR. KELLOCK: Yes, my lord. That might be done. Also there is a lace pattern around the top of the stocking sometimes.

The evidence also speaks of ringless knitting. That requires a special attachment, and the manufacturer of the attachment gets a royalty of ten cents per dozen stockings for the use of the attachment. That, of course, materially improves the stocking.

Then there are several ways of knitting the foot of the stocking. Some manufacturers knit what they call a cradle foot. That simply means, as I understand it, that instead of putting the seam where the stocking is joined together at the foot, ~~xxxxxxx~~ ix down the centre of the foot, it is made at each side, and that makes a much more comfortable stocking. And all that can be done within the specification.

Another very important thing is the matter of grading. In the evidence I read to your lordship this morning, Mr. Thompson spoke of the number of seconds that are experienced in making stockings.

THE COMMISSIONER: A stocking with some flaw in it ?

MR. KELLOCK: Yes, my lord, and the point at which one mill will class a stocking as a second, will consider that the flaw is sufficiently serious

are similar, but this piece appears to be kind of modelled on a very odd thing that might be put on.

Mr. [illegible]: Not quite so, sir, in a manner putting the product outside of the stocking?

Mr. [illegible]: Yes, my lord. Not quite so close. Also there is a lace pattern around the top of the stocking somewhere.

The evidence also speaks of [illegible] knitting, that requires a special attachment, and the manufacturer of the attachment gets a royalty of ten cents per dozen stockings for the use of the attachment. That, of course, materially improves the machinery.

Then there are several ways of knitting the foot of the stocking. Some manufacturers knit what they call a cradle foot. That simply means, as I understand it, that instead of knitting the sole, where the stocking is joined together at the foot, turning it down the centre of the foot, it is made at each side, and that makes a much more comfortable stocking. And all that can be done within the specification.

Another very important point comes in this matter of gradius. In the evidence I read to your lordship this morning, Mr. Thompson spoke of the number of seconds that are experienced in making stockings.

THE [illegible]: A stocking with more flow in it ?

Mr. [illegible]: Yes, my lord, and [illegible] will [illegible] the [illegible]

to make the stocking a second, will not be so in the case of other mills, and depending upon where you draw the line as between firsts and seconds as in regard to these flaws or defects, you get a very material difference.

THE COMMISSIONER: Each mill is free to draw its own line.

MR. KELLOCK: Yes, each mill is free to draw its own. In the document there is no description of the article. If you are going to fix the price you have to describe the article, and the only thing that is specified is that stockings are of first quality, but the mill itself decides what is first quality, and all that is specified is 4 threads and no finer than 42 gauge has to be sold at that price. But there are all these variables.

THE COMMISSIONER: At least those.

MR. KELLOCK: Yes, there are all these other variables, and it is left entirely in the hands of the mills themselves --

THE COMMISSIONER: As a matter of fact, can you tell me right now in regard to the article you have just described or any other article whether there is a variety of prices among the different mills ?

MR. KELLOCK: A variety of prices existed at the time these documents were in force.

THE COMMISSIONER: They only set a minimum price?

MR. KELLOCK: They only set a minimum price.

THE COMMISSIONER: Can you tell me as a matter of fact whether there are some mills selling higher

[illegible]

so make the closing a source, will not be as in the case of other mills, and therefore [illegible] draw the line as between fibers and seconds. In regard to these fibers or [illegible], you put a very [illegible].

THE COMMISSIONER: Each mill is free to draw its own line.

MR. [illegible]: Yes, each mill is free to draw its own. In the document there is a description of the article. If you are going to fix the price you have to describe the article, and the only thing that is specified in that description are of first quality, but the mill itself decides what is first quality, and all that is specified is 4 threads and no finer than 42 gauge has to be said at that price. But there are all these varieties.

THE COMMISSIONER: At least those.

MR. [illegible]: Yes, there are all these other varieties, and it is left entirely in the hands of the mills themselves --

THE COMMISSIONER: As a matter of fact, can you tell me right now in regard to the article you have just described or any other article whether there is a variety of prices among the different mills ?

MR. [illegible]: A variety of prices exists at the time these documents were in force.

THE COMMISSIONER: That was very almost a [illegible]

MR. [illegible]: They were not -- [illegible] prices.

THE COMMISSIONER: Can you tell us [illegible]

MR. [illegible]: [illegible]

than others ?

MR. McRUER: If they put a lace edge on they charge more than the minimum;

MR. KELLOCK: Mr. berry tells me that some of the mills were able to sell a stocking of that class and of other classes at higher prices than the minimum because they were known to be of a superior quality.

THE COMMISSIONER: That is, coming from such a mill ?

MR. KELLOCK: Coming from such a mill.

MR. McRUER: Some particular trade name or style?

MR. KELLOCK: Not necessarily because it covers branded and unbranded. It depended more on the reputation of the mill.

THE COMMISSIONER: When they put these extra decorations on them did they charge more than for stockings without the decoration ?

MR. KELLOCK: Not uniformly, no. That was left to the individual mill, how to market its own product, and within all these variables there was competition. And that is only in the matter of quality.

Then again, on the question of service there is not a word said in the documents, nothing about deliveries. I might be a retailer buying from a certain mill. I get a shipment and I say to the mill: You have sent me some seconds. The mill gives me service and takes them back at once, and naturally I am more inclined to deal with that mill than with the mill which says: No, you have to take what we send you. All that was left open and free, and there

that change ?

Mr. Smith: If they put a line upon it they change more than the minimum.

Mr. [illegible]: Mr. Berry tells me that some of the mills were able to sell a blending of the [illegible] and of other oilseeds at higher prices than the minimum because they were known to be of a superior quality.

The [illegible]: That is, coming from such a mill ?

Mr. [illegible]: Coming from such a mill.

Mr. [illegible]: Some particular trade name or style.

Mr. [illegible]: Not necessarily because it carries branded and unbranded. It depended more on the reputation of the mill.

The [illegible]: When they put these extra descriptions on them did they charge more than for stocklots without the description ?

Mr. [illegible]: Not uniformly, no. That was left to the individual mill, how to market its own product, and with all these variables there was competition. And that is only in the matter of quality.

Then again, on the question of service there is not a word said in the documents, nothing about deliveries. I might be a retailer buying from a certain mill. I get a shipment and I say to the mill: You have sent me some seconds. The mill gives me service and takes them back at once, and naturally I am more inclined to deal with that mill than with the mill which says: No, you have to take them and put them on. All that [illegible]

was competition both in quality and in service. The service continued unregulated. The document does not attempt to deal with that at all.

Referring to page 9, Section H of my brief, I say:

"Of all the products produced by the textile industry there is evidence that part only of the production of the following goods were included in attempts at price stabilization: full fashioned hosiery, cotton underwear, worsted and cotton yarn, towels and carpets."

I have left out there worsted cloth. It should be added to that list. I mention it later on, but it escaped from that list. Then with regard to full fashioned hosiery:

"With regard to full fashioned hosiery, the evidence is that memoranda made to stabilize prices from time to time constantly broke down through failure on the part of those interested to carry out the arrangements. These arrangements did not cover all the lines of full fashioned hosiery but were limited to the sales and low end lines and in the case of some of the mills that were examined on this point the prices in the memoranda were below the cost of production. There is no evidence that the prices of the lines in the memoranda were profitable prices in the case of any of the mills who were parties at any time to any of these arrangements. It cannot, therefore, be said that, so far as the

are correctible both in quality and in services. The service contract unremunerated. The Government does not attempt to deal with that at all.

Referring to page 9, Section H of my brief.

"In all the contracts produced by the textile industry there is evidence that part only of the production of the following goods were included in attempts at price stabilization full fashioned hosiery, cotton underwear, worsted and cotton yarn, towels and sheets." I have left out there worsted cloth. It should be added to that list. I mention it later on, but it escaped from that list. Then with regard to full fashioned hosiery:

"With regard to full fashioned hosiery, the evidence is that memoranda made by officials of the Department from time to time constantly brought down for such follows on the part of those interested to carry out the arrangements. These arrangements did not cover all the lines of full fashioned hosiery but were limited to the seven and low end lines and in the case of some of the mills that were examined on this point the prices in the memoranda were below the cost of production. There is no evidence that the prices of the lines in the memoranda were profitable prices in the case of any of the mills who were participating at any time in any of these arrangements. It cannot, therefore, be said that, so far as the

attempts to stabilize prices of certain lines of full fashioned hosiery were concerned, the public or consumer were in any way prejudiced. It is also to be noted that the arrangements were not in any way rigid and, it is submitted, were incapable of being enforced."

THE COMMISSIONER: If they were capable of being enforced, they would not be in contravention of any law.

MR. KELLOCK: No, they would not be. But if they were not, and my submission is that they were not, that element would not enter into it. What I am speaking about there, and it is a refinement, is that the form of the arrangement was between Mr. Hallam and each individual mill.

Your lordship at one stage of the proceedings said to me that each of the mills would not have consented unless the others did, and in that way there was mutuality, but I am submitting, my lord, that it does not go as far as that. There was not any right on the part of any individual mill to enforce the document to which they were not parties.

THE COMMISSIONER: The document contained provisions as to what would happen if any one of them broke away. There was to be notice to all the others, and then a meeting.

MR. KELLOCK: I do not think it says that.

THE COMMISSIONER: The hosiery one said that, or that was Mr. Hallam's evidence. He was to notify

attempts to stabilize prices of certain lines of full fashioned hosiery were concerned, the public or consumer were in any way prejudiced. It is also to be noted that the arrangements were not in any way rigid and, it is submitted, were incapable of being enforced."

THE COMMISSIONER: If they were capable of being enforced, they would not be in contravention of any law.

MR. LAMOND: No, they would not be. But if they were not, and my submission is that they were not, that element would not enter into it. What I am speaking about there, and it is a refinement, is that the form of the arrangement was between Mr. Nelson and each individual mill.

Your Lordship at one stage of the proceedings said to me that each of the mills would not have consented unless the others did, and in that my there was materiality, but I am submitting, my lord, that it does not go so far as that. There was not any right on the part of any individual mill to enforce the document to which they were not parties.

THE COMMISSIONER: The document contained provisions as to what would happen if some parties did not sign. There was to be a penalty by all the others who did sign.

MR. LAMOND: I do not think it was.

THE COMMISSIONER: The penalty one said that, on that one, mutatis mutandis. We are in equity

all of them if one had broken away, and then they had a meeting.

MR. KELLOCK: He said a meeting followed. What happened was that as they fell into disuse through breach, an effort was made to get them together again, but there is nothin in the document that covers that.

THE COMMISSIONER: I think part of the agreement was, or a verbal addition to it was that if any of them stopped carrying out this price agreement he was to notify Mr. Hallam fifteen days ahead of time, and then Mr. Hallam would notify all the others, and they would have a meeting to see what they were going to do about it. They were to adhere to this agreement except they gave fifteen days' notice.

MR. KELLOCK: Yes, my lord, I am not going to labour that. I turn again to page 10 of my brief:

> "As the evidence shows, they were not in fact enforced. The evidence does disclose that during the entire period covered by the attempts to stabilize prices the trend in prices of full fashioned hosiery was toward lower levels while the quality was greatly improved."

My friend said this morning that these documents raised prices. That is not so. If one examines them, the trend was downward. As a matter of fact, I will just read part of the evidence, from page 8678. Mr. Hallam was being examined, at line 20:

[illegible]

[illegible] Mr. [illegible] [illegible]

[illegible] [illegible] [illegible] [

"A. Now, running alongside that was the 4-thread stocking --"

That is the one I am dealing with:

"-- which was $6.35 in March, 1932; $5.65 in 1933; $5.35 in 1934; $5.25 on November 6th, 1934; $5.25 on May 1st, 1935; and $5.65 on September 21st."

And that last one never got beyond the incubation stage.

MR. McRUER: What about raw materials ?

MR. KELLOCK: The evidence is in. I have filed a chart which shows how the raw material in stockings fluctuates; that is the raw silk. Quoting again from the brief:

"That there was no undue enhancement of these full fashioned hosiery lines is conclusively established by the evidence of Mr. L. J. Thompson, page 11,278, line 1 to 11,279, line 10:

'Q. What do you say as to whether any of these agreements that you know of enhanced prices beyond what was fair and reasonable ? A. Well as a comparison, if you were to secure or had the opportunity to compare the American retail prices as hosiery is sold over the American counter with prices for hosiery sold in Canada to-day over the Canadian counter, you would find that the quality of the Canadian product was better on the average and the price not any higher, notwithstanding that to make hosiery in Canada we have to pay duty on the

"A. Now, turning alongside that was the 4-thread stocking --"

That is the one I am dealing with:

"-- which was 40.50 in March, 1922; 40.25 in 1923; 40.25 in 1924; 40.20 on November 6th, 1924; 16.25 on May 1st, 1926; and 16.60 on [illegible] 1927."

And that last one never got beyond the trading stage.

Q. [illegible]: What about raw materials?

Mr. [illegible]: The evidence is in. I have filed a smart watch shows how the raw material in [illegible] directors; that is the raw silk. Nothing again from the brief:

"That there was no undue expenditure on these full fashioned hosiery lines is conclusively established by the evidence of Mr. E. [illegible], page 11,[illegible], line 1 to 11,[illegible], line 10:

"Q. What do you say as to whether any of these accessories that you name of either our prices beyond what was fair and reasonable?

A. Making a comparison, if you were to assume or had the opportunity to compare the American retail prices on hosiery is sold over the American counter with prices for hosiery sold in Canada to-day over the Canadian counter, you would find that the quality of the Canadian product was better on the average and the price not any higher. [illegible]

machinery, the machines are built in the United States, and have also to pay duty on a number of supplies that go into the operation and into the making of hosiery which is over and above the expense of making hosiery in the United States.

Q. Is the raw silk any dearer to you than to American manufacturers ? A. There is a saving on raw silk of 2 cents a pound in Canada over the United States. That is purely in the carriage charges from Japan.

Q. You have to pay more for your machinery than the American manufacturers ? A. We have to pay duty on machinery coming in. The full fashioned hosiery machinery is built in the United States, and we have to pay duty on the needles brought in from the United States or Germany and on a number of other things that go into the manufacture of hosiery.

Q. You say that the quality has been maintained and that it is a higher quality in Canada than in the United States ? A. It is higher in Canada for the reason that we use a newer type of machines. On the average the machines are newer in Canada than in the United States.

Q. Is that because the industry is younger in Canada ? A. Younger in Canada, and they have a considerable number of the old fashioned type of machines.

machinery, the machines are built in the United States, and have also to pay duty on a number of supplies that go into the operation and into the making of hosiery which is over and above the expense of making hosiery in the United States.

Q. Is the raw silk any dearer to you than to American manufacturers? A. There is a saving on raw silk of 5 cents a pound in Canada over the United States. That is merely in the carriage charges from Japan.

Q. You have to pay more for your machinery than the American manufacturers? A. We have to pay duty on machinery coming in. The full finished hosiery machinery is built in the United States, and we have to pay duty on the needles brought in from the United States or Germany and on a number of other things that go into the manufacture of hosiery.

Q. You say that the quality has been maintained and that it is a higher quality in Canada than in the United States? A. It is higher in Canada for the reason that we use a newer type of machines. On the average the machines are newer in Canada than in the United States.

Q. Is that because the industry is younger in Canada? A. Younger in Canada, and you have a considerable number of the old fashioned type of machines.

By The Commissioner: Q. In the United States? A. In the United States.' "

And Mr. Thompson did not mention the 3 per cent excise which he has to pay on his raw material. Continuing at page 11, Section H of the brief, regarding cotton underwear:

"With regard to cotton underwear, the evidence is that since in or about the year 1933 some only of the manufacturers of underwear entered into an arrangement with regard to certain types of cheaper lines of cotton underwear on a basis similar to that existing in connection with full fashioned hosiery. The same types of underwear were produced in volume by other manufacturers who were not in any way concerned with any of these arrangements, and the evidence does not indicate in any way that there was any undue enhancement of price as a result of any of the price arrangements affecting these lines."

"With regard to worsted cloth, the evidence shows that the situation affecting this product was similar to the situation which brought about attempted price stabilization of full fashioned hosiery. The situation has already been described in the letter written by Mr. Dodd on the 28th of March 1933 forming part of Exhibit 765."

That is the letter which I read to your lordship at an earlier stage. Continuing:

By the Commissioner: Q. In the United States? A. In the United States." And Mr. Magnus did not question the 3 per cent excise which he was to pay on his raw material. Continuing, at page 11, Section 8 of the brief, regarding cotton underwear:

"With regard to cotton underwear, the evidence is that since in or about the year 1924 some only of the manufacturers of underwear entered into an arrangement with regard to certain types of cheaper lines of cotton underwear on a basis similar to that existing in connection with full fashioned hosiery. The same types of underwear were produced in volume by other manufacturers who were not in any way concerned with any of these arrangements, and the evidence does not indicate in any way that there was any undue enhancement of price as a result of any of the price arrangements affecting these lines."

"With regard to mercerized yarn, the witness says that the attention affecting this amount was directed to the reasonable and sufficient attempted price stabilization of full fashioned hosiery. The attention has already been described in the letter written by Mr. Bond on the 24th of December 1926 to Sir Henry Pelly.

That in the letter which I read to your Lordships at the earlier stage, Mr. Bond says:

"The mills also found it impossible to have their customers specify balances of contracts when prices were dropping. There were, according to the evidence, six mills which attempted price stabilization arrangement and five, and later six, which did not take part in the arrangements. The stabilization arrangements lasted from in or about the month of June 1933 until some time prior to August 1934, after which time some of the mills attempted to continue on the former basis."

What Mr. Dodd said was that they had not met since February of 1936, and that they were all free to sell at any price at which their competitors might sell. In addition to the evidence I refer to there, my lord, I should also like to refer your lordship to page 10932.

THE COMMISSIONER: Whereabouts are you now ?

MR. KELLOCK: There I say, my lord:

"The stabilization arrangements lasted from in or about the month of June 1933 until some time prior to August 1934."

It is about the middle of the first paragraph.

THE COMMISSIONER: What page of the evidence do you refer me to ?

MR. KELLOCK: Page 10932, line 12; and page 10933, line 7.

MR. McRUER: Mr. Dodd's evidence was that they still followed the policy certainly of agreeing on

"The mills also found it impossible to meet their customers special business of contracts [illegible]

to the evidence, six mills which attempted union stabilization arrangement and five, one later six, which did not take part in the arrangement. The stabilization arrangements lasted from in or about the month of June 1929 until some time prior to August 1929, after which time some of the mills attempted to continue on the former basis."

What Mr. Lord said was that they had not met since February of 1930, and that they were all free to sell at any price at which their competitors might sell. In addition to the evidence I refer to there, my lord, I should also like to refer your lordship to page 10982.

THE COMMISSIONER: Whereabouts are you now?

MR. ABBOTT: There I say, my lord:

"The stabilization arrangements lasted from in or about the month of June 1929 until some time prior to August 1929."

It is about the middle of the first paragraph.

THE COMMISSIONER: What part of the evidence do you refer me to?

MR. ABBOTT: Page 10982, line 12; and page 10982, line 7.

MR. McKUEN: Mr. Lord's evidence was that they still followed the policy generally of agreeing on

prices they would charge.

MR. KELLOCK: The evidence was this, that they had not met since February of 1936, they still followed the policy of discussing prices, but there was nothing rigid about it because they were all free to meet competition from mills which did not discuss prices with them.

MR. McRUER: But his evidence was that they were still maintaining prices.

MR. KELLOCK: The situation was -- I will read the evidence if you like -- I do not think there is anything between my friend and myself, but the evidence was that the four that were still left did discuss their selling prices.

MR. McRUER: Not only that, but fixed them.

MR. KELLOCK: If my friend says fixed them, all right, fixed them. But there was nothing rigid about it because a term of the arrangement, if you want to put it as formally as that, was that they were free to meet the competition of the mills outside, and that is the evidence to which I refer there.

MR. McRUER: They were always free to do that.

MR. KELLOCK: No, they were not.

THE COMMISSIONER: You speak of six mills which conducted stabilization arrangements, five and then later six ?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: What percentage were they of all the mills ?

prices they might charge.

MR. ALLOCCA: The evidence was this, that they had not any minimum category of 1966, they [illegible] the policy of discounting prices, but there was nothing [illegible] because they were all free to meet competition from mills which did not discuss prices with them.

MR. MORAN: But his evidence was that they were still maintaining prices.

MR. ALLOCCA: The situation was -- I will read the evidence if you like -- I do not think there is anything between my friend and myself, but the evidence was that the four that were still left did discuss their selling prices.

MR. MORAN: Not only that, but fixed them.

MR. ALLOCCA: If my friend says fixed them, all right, fixed them. But there was nothing really about it because a term of the arrangement, if you want to [illegible] it -- [illegible] was that they were free to [illegible] the mills outside, and that is the evidence to which I refer there.

MR. MORAN: They were always free to do that.

MR. ALLOCCA: No, they were not.

THE COMMISSIONER: You speak of six mills which [illegible] arrangements, five and then later six ?

MR. ALLOCCA: Yes, sir Lord.

THE COMMISSIONER: What percentage were they of all the mills ?

MR. KELLOCK: In regard to the output ?

THE COMMISSIONER: Any way you like to take it.

MR. McRUER: In this particular cloth.

MR. KELLOCK: I have not got it in my mind, but I am going to analyze this much more closely later, and I think that is part of the information I am going to give to your lordship. I am dealing with the matter here more in a general way to show that there is no undue enhancement, and in the case of full fashioned hosiery I compare American selling prices and our own, and show the disadvantage our mills labour under, and then I am going to come to the companies themselves which were parties to these arrangements. Continuing with the brief:

"The arrangements applied to a part only of the lines produced by the mills, and the prices were in some cases at least below cost of production. There is no evidence that any arrangements affecting the price of worsted cloth unduly enhanced prices, the evidence being that notwithstanding the attempted stabilization of prices on some lines, one company on the output of their mill as a whole had not, since 1928, been able to provide full depreciation."

That was Mr. Dodd's own company.

"The fact that stabilization of prices does not enure solely to the benefit of the mills but is in fact desired by users of worsted cloth is shown in evidence, page 11048, lines 9

Mr. A.LOCH: In regard to the output?

The COMMISSIONER: Any way you like to take it.

Mr. MORDEN: In this particular clause.

Mr. A.LOCH: I have not got it in my mind, but I am going to analyze this much more closely later, and I think that is part of the information I am going to give to your lordship. I am dealing with the matter here more in a general way to show that there is no undue enhancement, and in the case of full fashioned hosiery I compare American selling prices and our own, and show the disadvantage our mills labour under, and then I am going to come to the companies themselves which were parties to these arrangements. Continuing with the brief:

"The arrangements applied to a part only of the lines produced by the mills, and the prices are in some cases at least below cost of production. There is no evidence that any arrangements affecting the price of worsted cloth actually announced prices, the evidence being that notwithstanding the attempted stabilization of prices on some lines, one company on the output of their mill as a whole had not, since 1920, been able to provide full depreciation."

that was Mr. Dodd's own company.

to 31."

And Mr. Dodd gave very much the same evidence as Mr. Thompson with regard to full fashioned hosiery -- that the buyers from the mills desire that prices will be stable. Then coming to worsted yarns:

"With regard to worsted yarns the evidence as set forth stated a number only of mills producing worsted yarn met from time to time to consider what selling prices of worsted yarns ought to be, having regard to cost of production and changes in prices of worsted tops, their raw material. The information as to the prices thus discussed was then embodied in a list and sent out to some of the mills. Exhibit 573 is one of the lists, and the evidence was that while it was the intention that with the knowledge thus obtained as to what prices should be, the mills should sell at these prices, it was not binding upon the mills receiving it. As Exhibit 573 itself shows, it was sent to the Monarch Knitting Company Limited, which mill did not sell any such yarn at all."

And the evidence on that I set out on the following page. My friend is examing Mr. Burns, the manager of the Monarch Company, as follows:

and Mr. Budd were then the main witnesses on Mr. Thompson with regard to full treatment machinery -- that the buyers from the mills feeling that prices will be stable. Then coming to material issues:

"With regard to worked pieces the evidence is not worth stated a number only of mills producing worked pieces met from time to time to consider what selling prices of worked pieces ought to be, having regard to such of manufacture and changes in prices of worked pieces, their raw material. The information as to the prices then discussed was then embodied in a list and sent out to some of the mills. Exhibit 272 is one of the lists, and the evidence was that while it was the intention that with the knowledge thus obtained as to what prices should be, the mills should sell at these prices. It was not binding upon the mills receiving it. As Exhibit 272 itself shows. It was sent to the Toronto Stamping Company Limited, which mill did not sell any such pipe at all."

And the evidence on that I set out on the following page. Mr. Allen in speaking the Board, said:

"Mr. Chairman, ..."

"Mr. McRuer: Mr. Burns, I show you a circular dated the 28th of November, 1935, which is headed 'effective from' -- I think this is my lord, I will just have to check and see if it is the same one. It is marked 'effective from September 27th, 1935' and it sets out certain prices for yarns. This comes from your files ? A. Oh, I think I know what this is.

Q. Yes, tell me what it is ? A. I think this was a price list that was gotten out in connection with worsted yarns that were sold.

Q. In connection with worsted yarns, a price list that was gotten out by the association? A. I don't know, I cannot say, we are not in that end of the business.

Q. You don't make any of these yarns ? A. We make them but we use them ourselves.

Q. You don't sell any ? A. No.

Q. You don't make any for sale to the public ? A. No, that is for sale to manufacturers.

Q. Did you take any part in arriving at the prices ? A. I don't remember ever taking any part.

Q. Yes, this is the same as exhibit number 373, my lord.

The Commissioner: Just leave it that way.

Mr. Sawyer: Q. Now, I have you a circular dated the 26th of November, 1943, which is headed 'Effective from' -- I think this is my letter, I will just have to ensure we see if it is the same one. It is entitled 'Effective from 8 September 27th, 1943' and it sets out certain prices for yarns. This came from your files? A. Yes, I think I know what this is.

Q. Yes, tell us what it is? A. I think this was a price list that was written out in advance for a normal period that was not.

Q. In connection with certain yarns, a price list that was written out by the Wool Office?

A. I don't know, I cannot say, we stocked in that end of the business.

Q. You don't make any of these yarns?

A. We make them but we do that during the [illegible].

Q. [illegible]

A. You don't make any for sale to the public? A. No, that is for sale to [illegible].

Q. Did you take any part in preparing the prices? A. I don't remember over seeing the [illegible].

Q. Now, this is Mr. [illegible] number 3?, is that.

Mr. [illegible]: Just leave it that way.

Mr. McRuer: So I will just leave it. It reached Mr. Burns and that is all. You say none of these yarns are the sort that you manufacture for sale to the public ? A. No.

Q. So that you would not really be affected by the price list ? A. No, we would not be interested."

Continuing with the brief:

"Coupled with this there was the system initiated as a result of the circular of November 29th, 1935, part of Exhibit 1240, under which five and then four of the mills referred to in Exhibit 573, filed or "registered" -- the word used in Exhibit 1240 -- the contracts which they entered into with their customers of their sales of yarn, and each such mill agreed that it would not quote the customers of the others mentioned in the contracts filed at prices lower than the prices provided for in these contracts during the terms of the contracts respectively. The evil which this system was designed to counteract was the practice formerly prevailing by which one mill securing a contract from a customer based on raw material which a spinning mill had contracted for before taking the order or on taking the order, the yarn to be specified within a certain period -- "

That would be by the buyer:

ROBT. BRYDIE
CHARTERED ACCOUNTANT
TORONTO

Mr. Hyndman: Do I will you answer.

It reached us, mean you that in all. You say none of these prices are the sort that you manufacture for sale to the public? A. No.

Q. So that you would not really be affected by the price list? A. No, we would not be interested."

Continuing with the belief:

"Coupled with this there was the question initiated as a result of the circular of December, 1925, part of exhibit 1240, under which five and then four of the mills referred to in exhibit 476, filed or "registered" -- the word used in exhibit 1240 -- the contracts which they entered into with their customers of their price of yarn, and each one will extend that it would not quote the exact terms of the return contained in the contracts filed or prices lower than the prices provided for in these contracts during the terms of the contracts respectively. The evil which this act was designed to counteract was the practice formerly prevailing by which one mill securing a contract from a customer based on the material then a competing mill had one quoted for before taking the order or on taking the order. The idea to be conveyed within the contract prices —

That would be by the buyer:

"-- within a certain period (sometimes as long as a year) would have its customer approached by a competing mill quoting a lower price with the result that the customer would then refused to specify his contract with the original mill --"

THE COMMISSIONER: I think they must have borrowed that from the United States.

MR. KELLOCK: Maybe, my lord:

"-- and would place a new order with the competing mill. This situation would develop frequently during periods when the raw material market was falling. In periods when raw materials were rising the customer insisted on the mills carrying out their contracts. The mills found it impossible in periods when the raw material markets were falling to take the matter to the courts to force customers to specify existing contracts for fear of losing the good will of the customer, with consequentloss of future business. The very existence of this last mentioned system negatives conclusively the existence of common fixed prices among the mills, as otherwise it would not have been necessary to devise this method of preventing customers breaking their contracts by reason of the inducement afforded from quotations of the other mills on a lower scale."

I think that is fair. Then with regard to towels:

"-- within a certain period (sometimes as long as a year) would have its customer guaranteed by a guarantee will receive a lower price with the result that the customer would then refused to specify his contract with the original mill --

THE PRESIDENT: I think they must have been not from the United States.

[illegible] Sir, my [illegible]

"-- and would place a new order with the competing mill. This situation would develop frequently during periods when the raw material market was falling. In periods when raw materials were rising the customer is limited on the mills accepting our price contracts. The mills found it impossible in periods when the raw material markets were falling to force the orders to the [illegible] to [illegible] customers, to specify existing contracts for fear of losing the good will of the customer, with consequentlam of future business. The very evil there of this last mentioned system manifestly conclusively the [illegible] [illegible] [illegible] [illegible] as otherwise it would not have been necessary to devise this method of preventing customers breaking their contracts by reason of the competitive effected from quotations of the other mills on a lower scale."

I think that is fair. Then with regard to tunnels:

"The evidence is that in June 1933 the three Canadian manufacturers of cotton terry towels arranged a uniform costing system which, while not setting out prices, provided a basis on which their prices would in fact be fairly uniform, although they did not in fact arrive at the same selling prices. The discussions with regard to towels were held in the offices of the Association as a convenience, but were not part of the function of the Canadian Woollen and Knit Goods Manufacturers Association. No means were provided for the enforcement of this arrangement. It should be noted that although all the Canadian manufacturers of this product took part in this arrangement 26 per cent of the Canadian consumption of towels in 1934 was imported. This fact of itself would prevent the maintenance by the Canadian mills of unreasonable prices."

MR. McRUER: What kind of towels ?

MR. KELLOCK: Terry towels.

MR. McRUER: You say 36 per cent of the terry towels imported. How do you get the figures on terry towels coming in ?

MR. KELLOCK: I did not say terry towels; I said towels.

MR. McRUER: This agreement was in regard to terry towels.

MR. KELLOCK: It would include terry towels.

"The evidence is that in June 1921 the
nurse Jones distributed a notice boldly
arranged a military summary system which,
was getting out prices, provided a basis to
their prices would in fact be fairly uniform.
Johnson Long did not in fact publicize the
notice alone. The discussions with regard to
Jones' part in the adoption of the
re a conspiracy, but were not part of the
ion of the conditions governing and limit
Restrictive Practices. Be sure are pro-
vided for the enforcement of this agreement.
It should be noted that although all the
Jones' conspiracy of this
part in this arrangement is an part of her
restriction conspiracy of terms in Jones was
incorrect. This fact of itself would prove
the misinformation by the Jones a lie of un-
reasonable nature."

Mr. Jones: Does mind a cigarette?

Mr. Justice: Very kind.

Mr. Jones: You may be not used to the hard
towels, Jones. Do you get the figures on your
pad. Looking in?

Mr. Jones: I did not say very clever; I was
good.

Mr. Jones: That's unfortunate was in terms to
[illegible] conspiracy.

Mr. Justice: Mr. Jones, I'm not trying to [illegible].

THE COMMISSIONER: At the beginning of the paragraph you referred to three Canadian manufacturers of cotton terry towels only.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Not to all makers of all towels but only to manufacturers of cotton terry towels.

MR. KELLOCK: That is all.

THE COMMISSIONER: And there you say that they arranged a uniform costing system.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: And then you say that 56 per cent of the Canadian consumption of towels in 1934 was imported. That is a different thing. What percentage did the terry towels represent ?

MR. KELLOCK: We cannot separate that in the statistics.

THE COMMISSIONER: I suppose it would mean this, that the other towels would compete with the terry towels, would they ?

MR. KELLOCK: They do.

MR. McRUER: A hand towel does not compete with a bath towel. A terry towel is a bath towel.

MR. KELLOCK: No, the terry towel is used for both purposes. I use them myself. What I mean in that paragraph is this: The Canadian production includes all kinds but the only line to which the uniform costing system applies is the terry towel. The imports also include all lines of towels, and one kind of a towel, whether it is a hand towel or a bath towel, competes with another.

THE CHAIRMAN: Is the beginning of the paragraph you referred to three Canadian manufacturers of cotton terry towels only.

MR. MALOOF: Yes, my lord.

THE CHAIRMAN: Not to all makers of all towels but only to manufacturers of cotton terry towels.

MR. MALOOF: That is all.

THE CHAIRMAN: And there you say that they announced a uniform costing system.

MR. MALOOF: Yes, my lord.

THE CHAIRMAN: And turning on my that 6 per cent of the Canadian consumption of towels in 1964 was imported. That is a difficult thing. What percentage did the terry towels represent ?

MR. MALOOF: We cannot suggests that in the statistics.

THE CHAIRMAN: I suppose it would mean this, that the other towels would compete with the terry towels, would they ?

MR. MALOOF: They do.

MR. KERR: A bath towel does not compete with a bath towel. A terry towel is a bath towel.

MR. MALOOF: No, the terry towel is used for both purposes. I use them myself. What I mean in that paragraph is this: The Canadian production involves all kinds but the only line to which the uniform costing system applies is the terry towel. The importer also imports all lines of towels, and one kind of a towel, whether it is a linen towel or a bath towel, regardless of quality.

It would be impossible for the manufacturers of terry towels in Canada to maintain the price of just one line of towels at an unreasonable level because of the domestic production of other lines of towels as well as the competition of terry towels and other towels imported. In other words, there is no monopoly in the sale of terry towels themselves, and the other towels compete with terry towels, whether they are produced in Canada or imported.

I come now to cotton yarns, page 15 of the brief, Section H:

> "There is evidence that for some years four Canadian cotton spinners had arranged a uniform selling price list for cotton yarns."

That should read, up to 39's only:

> "The arrangement of this list was carried out entirely outside the operations of the Cotton Institute. There were at least four other cotton spinning companies selling yarns who at no time were parties to this arrangement. The evidence is that not only did the buyers of cotton yarns not object to uniform yarn selling prices on the part of these four mills, but in fact regarded it favorably because it had the tendency to stabilize prices for the products they manufactured throughout the season. since they knew the price they paid for yarn would be the price paid by their competitors.

That arrangements looking to the

stabilization of prices and the providing of price information, such as were resorted to in the cases dealt with above, are proper and reasonable at any time, and particularly in such circumstances as existed in the year 1932 and following years is recognized in other jurisdictions."

THE COMMISSIONER: Does that statement refer only to this ?

MR. KELLOCK: No, it is general. It should be a new paragraph.

THE COMMISSIONER: I notice that later on you refer to carpets.

MR. KELLOCK: Yes, I come to Brussels carpets. Mr. Dodd's evidence was that the major part of the yarn was sold by these four companies, that the other companies spun yarn for their own use and sold some of their surplus.

MR. McRUER: So it cannot be suggested that the other four companies were in competition with these companies.

MR. KELLOCK: These companies were, according to the evidence. Not only that, but if these companies that were manufacturing a large part of the yarns for sale had not got any too attractive prices, these other companies which were not manufacturing for sale but for their own use, but which had the equipment to manufacture for sale, would certainly have been directed into the business, but the prices were

establishment of prices and the protection
of the industries. Now we were resorted to
the cases dealt with above, are proper on-
reasonable at any time, and particularly in
such circumstances as existed in the year 1
and following years in reference to other
industries."

Mr. [illegible] Was that statement
on y to this ?

Mr. [illegible]: No, it is general. It stand
by a new paragraph.

The Commissioner: I notice that later on
you refer to a report.

Mr. [illegible]: Yes, I came to Winnipeg on
Mr. Hoad's evidence was that the major part of the
year was sold by three car companies, that the other
companies spun yarn for their own use and sold some
of their surplus.

Mr. [illegible]: So it cannot be suggested that
the other four companies were in competition with
these companies.

Mr. [illegible]: These companies were, such as
to the [illegible]. Not only that, but it does com-
pared that were manufacturing a large part of the
yarn [illegible] had not got any too [illegible] mills,
[illegible] mills were not manufacturing for
sale but for their own use, but which had been [illegible]
ment to manufacture for sale, would be [illegible]
[illegible] directed into the business, but the prices were

not attractive enough to bring that result about.

MR. McRUER: They would have a great chance against the combination of these Big Four companies.

MR. KELLOCK: It is a question of price entirely.

MR. McRUER: They would put them out of business in short order.

MR. KELLOCK: Not without running foul of section 498A now. My friend is hard to convince, and I am not going to try to convince him. Continuing with the brief:

"Exhibit 1198 reveals similar action in the cotton spinning industry in England, where the difficulties experienced by the industry due to price cutting are now dealt with by price stabilization agreements. Other sections of the English cotton industry which maintain price fixing organizations are the commission finishers and the commission packers."

THE COMMISSIONER: It is the sections you are referring to there ?

MR. KELLOCK: Yes, sections of the subject, and these exhibits give the details of these agreements. They are very formal agreements which are drawn up with the idea of a suit for damages in case of breach.

MR. McRUER: They are legal in England.

MR. KELLOCK: And they are legal here so long as the price is not undue.

MR. McRUER: Oh no, that is not the law here at all. The question is are they likely to operate

not attempting among to bring that result about.

Mr. Reid: They must have a power above

[illegible] the constitution of [illegible]

Mr. [illegible]: It is a question of great magnitude.

Mr. Reid: They would put them out of business in short order.

Mr. [illegible]: Not without making [illegible] of

meeting [illegible] now. My friend is hard to convince, and I am not going to try to convince him.

Continuing with the brief:

'Exhibit 1108 reveals similar action in the [illegible] relating [illegible] by [illegible], where difficulties encountered by the industry are to [illegible] with by [illegible] stabilization [illegible]. Other [illegible] of the English [illegible] [illegible] while [illegible] operations are the [illegible] [illegible] and the [illegible] [illegible].'

Mr. [illegible]: It is the [illegible] [illegible] [illegible] in [illegible]?

Mr. [illegible]: Yes, [illegible] of the [illegible], and these [illegible] give the [illegible] of [illegible] [illegible]. They are very formal [illegible] which are [illegible] up with the idea of a [illegible] for [illegible] use of [illegible].

Mr. [illegible]: They are local in [illegible].

Mr. [illegible]: And they are local [illegible] [illegible] the [illegible] in [illegible].

Mr. [illegible]: Oh no, that is not the [illegible] [illegible]. The question is [illegible] [illegible] to [illegible]

to the detriment of the interests of the public.

MR. KELLOCK: "And" likely to operate to their detriment.

MR. McRUER: Not "and".

MR. KELLOCK: My friend has not shown that they are likely to or that they have operated to their detriment. My friend just assumes that.

THE COMMISSIONER: Where is that section ?

MR. McRUER: It is in my brief at page 289.

MR. KELLOCK: Yes, at page 289, my lord. I referred to it this morning in connection with the Adelaide Steamship case.

THE COMMISSIONER: It says which "has operated or is likely to operate."

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER (reading): "To the detriment or against the interest of the public, whether consumers, producers, or others."

MR. KELLOCK: Yes, my lord, and section 498 is on page 290, at the foot of the page.

THE COMMISSIONER: It says "unduly".

MR. McRUER: "Unduly" is used in the third paragraph.

MR. KELLOCK: I was just going to mention that but my friend is always ahead of me.

THE COMMISSIONER: It says unduly restrict competition in the sale or supply of any article.

MR. KELLOCK: Your lordship will notice that in (b) the word "unduly" does not appear.

THE COMMISSIONER: That is "to restrain or injure trade." Of course the word "injure" is a noxious

to the Government of the Dominion of the public.

A. [illegible]: "And" likely to operate to [illegible] [illegible].

Q. [illegible]: Not "and".

A. [illegible]: My friend has just shown that they are likely to do just they have operated to their detriment. My friend just [illegible] line.

Q. [illegible]: Where is that position?

A. [illegible]: It is in my brief as [illegible] [illegible].

Q. [illegible]: Yes, at page 880, my lord. I believe to it this morning in connection with the [illegible] [illegible] case.

The [illegible]: It says which "has operated or is likely to operate."

A. [illegible]: Yes, my lord.

The [illegible] (reading): "In the [illegible] [illegible] [illegible], [illegible], or [illegible]."

A. [illegible]: Yes, my lord, and section 88 is on page 880, at the foot of the page.

The [illegible]: It says "[illegible]".

A. [illegible]: "Unlawfully" is used in the [illegible] [illegible].

A. [illegible]: I was just going to mention that my friend is going ahead of me.

The [illegible]: It says "[illegible] [illegible] [illegible] is the sale or supply of any article."

A. [illegible]: [illegible] [illegible] [illegible] is (b) the word "[illegible]" [illegible] [illegible].

The [illegible]: That is "[illegible] [illegible]

term.

MR. KELLOCK: I was going to say, my lord, that in the Zorowski case, which is one of those I referred to this morning, it was decided that "unduly" applies to the whole section. I will give your lordship another specific reference on that. There must be an undue enhancement, and it must operate or be likely to operate to the detriment of the public. I have noticed the situation a little later on in my submissions, where I submit that none of these have operated -- in fact many of them are no longer in existence, and my submission with regard to the others, which I shall deal with, the one or two which are still in effect, are not likely to operate to the detriment of the public.

MR. McRUER: Of course, I never asked his lordship to find that these were criminal agreements. I have only asked him to refer them to the proper officer for investigation.

MR. KELLOCK: I am going to have a submission with regard to that when I get through dealing with the matter. My friend merely assumes things. The existence of an agreement is not enough.

THE COMMISSIONER: The question is whether any presumption is raised which is sufficiently strong.

MR. KELLOCK: I want to deal with that because I submit that the evidence shows clearly that the presumption is not there. In fact, the affirmative finding is the other way, if your lordship wanted to

Mr. [illegible]: I was going to say, my lord, that in the Jorowski case, which is one of those I referred to this morning, it was decided that "[illegible]" applies to the whole section. I will give your lordship another specific reference on that. There must be an under assessment, and it must operate or be likely to operate to the detriment of the public. I have noticed the situation a little later on in my submissions, where I submit that none of these have operated -- in fact some of them are no longer in existence, and my submission with regard to the future, which I shall deal with, the one or two which are still in effect, are not likely to operate to the detriment of the public.

Mr. [illegible]: It seems, I never saw his lordship to find that these were criminal offences. I have only sent him to inter them to the proper officer for investigation.

Mr. [illegible]: I am going to have a submission with regard to that when I get through dealing with the matter. My friend merely assumes things. The existence of an agreement is not enough.

His Lordship: The question is whether any prejudicial is related which is sufficiently serious.

Mr. [illegible]: I want to deal with that because I submit that the evidence shows clearly that the prejudicial is not there. In fact, the evidence is leading in the other way. If your lordship is prepared to

go that far. My submission is that we ought not to be put to the trouble, for want of a better word, of a further investigation in view of the facts existing which I want to submit to your lordship.

Turning again to my brief with respect to carpets:

"Exhibit 1192 contains the particulars as to the attempt by this section of the industry to stabilize prices. The conditions in which carpet manufacturers found themselves in 1934 were similar to those existing in other branches of the industry."

That is the year of the arrangements:

"Between 1929 and 1933 the total carpet business transacted in Canada fell from $8,778,179 to $2,615,531, while Canadian production fell from $5,434,555 to $2,195,849. The Canadian mills had difficulty in operating on only $2,200,000 production. The result was serious price cutting in order to obtain business followed by the passing of dividends and threat to capital structures."

MR? McRUER: That is not correct.

Mr. KELLOCK: I think I can support it.

Mr. McRUER: Passing dividends was done only by companies that have not paid any dividends yet.

MR. KELLOCK: I cannot give all this in one sentence, my lord, and my friend insists on arguing as I go along.

THE COMMISSIONER: What is it you say ?

so that for. My submission is that we ought not to be put to the trouble, for want of a better word, of a further investigation in view of the facts existing which I want to submit to your Lordship.

Turning again to my order with respect to exports:

"Exhibit 1182 contains the particulars as to the export by this section of the industry to specific prices. The conditions in Nova Scotia were similar to those existing in other branches of the industry."

That is the year of the arrangement:

"Between 1919 and 1923 the total output was transported in Canada. Coal from 6,772,141 to 6,645,021, while Canadian production fell from 9,494,000 to 8,182,000. The transportation had difficulty in operating in only 22,000,000 production. The result was certain price cutting in order to obtain business followed by the pooling of divisions and forces to capital structures."

MRS MACPHERSON: That is not correct.

Mr. MACLEOD: I think I can answer it.

Mr. MACLEOD: Exactly divisions was done only on conditions that there not have any divisions yet.

Mr. ARL COUR: I cannot give all this in one sentence, my Lord, and my learned friend insists on stating it in detail.

MR. KELLOCK: I am reading right from the exhibit, and the exhibit is a letter from Mr. Cuthbertson, a letter written to my friend at his own request, and put in without any cross-examination whatsoever, and I am quoting what is in his letter.

MR. McRUER: His company, the Harding company, had never paid dividends.

MR. KELLOCK: I am not speaking of the Harding Company; I am speaking of the carpet companies. Quoting:-

"The result was serious price cutting in order to obtain business, followed by the passing of dividends and threat to capital structures. In March 1934 our principal mills adopted a basis of their own outside the Association with the object of protecting their industry against the destructive practices already mentioned. As was the case in other branches of the industry, buyers were in favour of the measures adopted. These measures were entirely voluntary with no means of enforcement, and as a matter of fact, uniformity in prices or discounts was not attained. The present situation is that competition continues with all producers falling in line with prices quoted by the others."

In other words, my lord, if I am a carpet manufacturer and I enhance my prices, then if the other people meet them at once we are back again on the basis of fullest competition. It means that as soon as I enhance the price for a ~~xxpx~~ carpet which corresponds to a carpet manufactured, say, by your lordship, your lordship at

MR. PERLOCK: I am reading right from the exhibit, and the exhibit is a letter from Mr. Gritzbertson, a letter written to my friend at his own request, and put in without any cross-examination whatever, and I am quoting what is in his letter.

[illegible] the witness, in [illegible] had never paid dividends.

MR. KERLOCK: I am not speaking of the Berdine Company; I am speaking of the carpet companies. Continuing: "The result was serious price cutting in order to obtain business, followed by the passing of dividends and threat to capital structures. In Mexico 1924 our principal mills adopted a basis of their own outside the Association with the object of protecting their industry against the destructive practices already mentioned. As was the case in other branches of the industry, buyers were in favour of the measures adopted. These measures were entirely voluntary with no means of enforcement, and as a matter of fact, uniformity in prices or discounts was not attained. The present situation is that no position continues with all producers falling in line with prices quoted by the others."

In other words, my lord, if I as a carpet manufacturer [illegible] at once we are back again on the basis of fallout competition. It means that as soon as I announce the [illegible] carpet which corresponds to a carpet [illegible], yes, in fact instead, [illegible]

once meets my price.

THE COMMISSIONER: The same price. I conform to your price?

MR. KELLOCK: Conform to my price, not because of any arrangement, but because of competition.

MR. McHUGH: The exhibit does not show that.

MR. KELLOCK: You are speaking about the time

16903 follows

when the arrangement was made and was operative. I am speaking of since that time. Continuing:

"It might be noted in connection with this branch of the industry, as pointed out in Exhibit 1192, that while the employment in the Canadian carpet industry fell sharply between 1930-3 the wage rates in 1933 were higher than any other group in the textile industry."

Then I deal with prices and profits:

"While the articles subject at any time to price discussions are few in number and form a small portion of the output of any of the sections, and the profit or loss on the sale of these articles has not been segregated, the following figures of the average net profit of the sections of the industry affected before and during the existence of price discussions show that there can be no criticism from the standpoint of profits of any of the sections affected."

~~Mexxxxx~~ Any arrangement which existed in the industry did not do very much good from the standpoint of profits because in the period from 1926 to 1930, which was before there were any price discussions the earnings were in the case of knit goods 4 per cent. Then I give a table as follows:

when the arrangement was made and was otherwise. I am speaking of since that time. Continuing:

"It might be noted in connection with this trend of the industry, as pointed out in March 1932, that while the employment in the textile carpet industry fell strongly between 1929-3 the wage rates in 1932 were higher than any other group in the textile industry."

Then I deal with prices and profits:

"While the printing estimate of any rise in price dissemblance any fall in wages and there a small portion of the output or any of the manufacturers, nor the profits of loss on the sale of these articles has not been ascertained, the following figures of the average net profit of the sections of the industry affected before and during the existence of price discussions show that there can be no criticism from the standpoint of profits of any of the sections affected."

Market day arrangement which existed in the industry did not do very much good from the standpoint of profits because in the period from 1928 to 1930, which was before there were any price discussions the earnings were in the case of wall goods 4 per cent, floor 1 cent, in [illegible]

	Knit Goods	Carpets	Hosiery	Cottons	Woollens
1926-30	4 %	6.7%	11.4%	4.9%	2.9%
1931-35	1%	2.8%	7.1%	3.8%	2.6%

THE COMMISSIONER: Do woollens include worsteds?

MR. KELLOCK: Yes, my lord, they do. That is the whole industry.

MR. McRUER: That is not the profits on the article on which the agreement existed.

MR. KELLOCK: There is no way of segregating them. Neither your witness nor mine could do it, but this is the result for all the industry where they operated. They were few in comparison with the number of lines put out by any section of the industry. Continuing with the brief:

> "Some time was devoted at the hearings to determine whether or not there existed in the industry any control of production by the mills It is submitted that the evidence shows clearly that no control exists or ever did exist, and that the only branch of the industry which at any time considered the possibility of establishing control of production was the broad silk section."

That is the section that succeeds in escaping my friend's condemnation in some respects at least. Continuing:

> "In and prior to the year 1932 this section of the industry was suffering from depression

Year	Output	Value	Factory Cost	Selling
1929-30	4,6	6,74	11,66	4,36	6,06
1931-32	16	2,26	7,16	3,86	2,06

THE COMMISSIONER: Do woollens include worsteds?

MR. ALLOUT: Yes, my lord, they do. That is the whole industry.

MR. [illegible]: That is not the profits on the article on which the agreement existed.

MR. ALLOUT: There is no way of separating them. Neither your witness nor mine could do it, but this is the result for all the industry where they operated. They were few in comparison with the number of firms set out by any section of the industry [illegible]

"Some time was devoted at the hearing to determine whether or not there existed in the industry any control of production by the mills. It is submitted that the evidence shows clearly that no control exists or ever did exist, and that the only branch of the industry which at any time considered the possibility of establishing control of production was the broad silk section."

That is the section that succeeds in escaping my friend's condemnation in some respects at least, continuing:

"As far prior to the year 1932 this section of the industry was sufficient from [illegible]

conditions, over production and price cutting. A survey was made by a firm of chartered accountants with the idea of establishing a basis of production control of broad silk fabrics. Nothing came of these efforts and no control of production was in fact ever established. The evidence also shows that some sections of the industry had for many years a system under which the individual mills reported monthly to the Association's secretary as to production and stocks on hand. The secretary compiled these reports and sent out his compilation to reporting mills. These reports, of course, would furnish information to the mills receiving them on the state of the market by which they could, if they wished, regulate their operations, but reports of this nature would serve only for the same purpose as other reports received from government or other sources, such as the reports on production, sales and stocks referred to in the evidence at pages 8682 to 8688, and Exhibit 648. It is submitted that if the furnishing of this information to the mills has to any degree served to limit over production, the Association has performed a useful service to the community as a whole since it is inconceivable that over production could be considered as

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chartered accountants with the idea of es-
tablishing a basis of production cost of
broad silk fabrics. Nothing came of these
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their operations, but reports of this nature
would serve only for the same purpose as other
[illegible]
sources, such as the reports on production,
sales and stocks referred to in the evidence
at pages 2082 to 2084, and Exhibit 288. It
is submitted that if the furnishing of this
information to the mills has to any degree
served to limit over production, the associa-
tion has performed a useful service to the
[illegible]ity as a whole since it is inconceivable
that over production could be considered as

being anything but a wasteful form of economic activity. The evidence is that this information did not prevent over production in the case of the broad silk section. On the other hand, industry can be criticized for not taking measures to provide itself with adequate statistical information for the purpose of preventing the waste consequent on operations carried on without proper knowledge of conditions."

I do not think that needs any comment, my lord. My submission is that that is sound.

Now I want to analyze the situation a little more carefully, and I have done that in writing.

MR. McRUER: Is this an additional brief my friend is putting in ? I think he might have let me have it, if it is .

THE COMMISSIONER: It has to do with this question of price stabilization ?

MR. KELLOCK: Yes, my lord. It is really a reply.

THE COMMISSIONER: We can start it, and if you are taken by surprise, Mr. McRuer, you can let me know.

MR. McRUER: It is a strange thing that my friend should want to put this brief in now when we agreed to put our briefs in at a certain time, and now he comes along with a new brief altogether. I think it is rather unreasonable.

CANADA

using anything but a wasteful form of economic activity. The evidence is that this information didn't prevent over production in the case of the brown silk section. On the other hand, industry can be criticized for not taking measures to provide itself with adequate statistical information for the purpose of preventing the waste consequent on operations carried on without proper knowledge of conditions."

I do not think that needs any comment, my lord. My submission is that that is sound.

Now I want to analyze the situation a little more carefully, and I have done that in writing.

MR. ROWELL: Is this an additional brief my friend is putting in? I think he might have let me have it, if it is.

THE COMMISSIONER: It has to do with this question of price stabilization?

MR. ROWELL: Yes, my lord. It is really a reply.

THE COMMISSIONER: We can start it, and if you are taken by surprise, Mr. Rowell, you can let me know.

MR. ROWELL: It is a supreme thing that my friend should want to put this order in now when we agreed to put our briefs in at a reasonable time, and now he comes along with a new brief illegitimate. I think it is rather unreasonable.

MR. KELLOCK: My friend has no ground for complaint. My friend deals with this subject in his brief quite extensively, and what I have prepared here and completed quite recently is simply my argument in answer to my friend's argument in his brief. I have put it in writing because I think that tends to conciseness and accuracy, rather than I should stand up and speak from notes.

THE COMMISSIONER: The only point is, could you not have given a copy of this to Mr. McRuer several days ago ?

MR. KELLOCK: I might, a day or so ago.

MR. McRUER: Why didn't you do it ?

MR. KELLOCK: I did not think of it, as a matter of fact, and if I am to be censured for that I shall have to accept it. I never thought of it at all.

THE COMMISSIONER: Is this the end of your case or are there other things ?

MR. KELLOCK: I have still a couple of other things to deal with first, my lord, in my brief.

THE COMMISSIONER: I would suggest that you take them now and let this stand over until tomorrow morning when Mr. McRuer will be in a better position to follow it.

MR. KELLOCK: Very well, my lord.

MR. McRUER: If my friend wants to go on with it now, let him do so, because I shall not have any time to look at it now.

MR. ROSS: My friend has no ground for complaint. My friend deals with this subject in his brief quite extensively, and what I have prepared here and completed quite recently is simply my argument in answer to my friend's argument in his brief. I have put it in writing because I think that tends to conciseness and accuracy, rather than I should stand up and speak from notes.

THE COMMISSIONER: The only point is, could you not have given a copy of this to Mr. Scott several days ago?

MR. ROSS: I might, a day or so ago.

MR. SCOTT: Why didn't you do it?

MR. ROSS: I did not think of it, as a matter of fact, and if I am to be answered for that I shall have to accept it. I never thought of it at all.

THE COMMISSIONER: Is this the end of your case or are there other things?

MR. ROSS: I have still a couple of other things to deal with first, my Lord, in my brief.

THE COMMISSIONER: I would suggest that you take this now and let this stand over until to-morrow morning when Mr. Scott will be in a better position to follow it.

MR. ROSS: Very well, my Lord.

MR. SCOTT: If my friend wants to go on with it now, let him do so, because I shall not have any time to look at it now.

THE COMMISSIONER: We will let it stand overnight.

MR. KELLOCK: I am sorry, my lord. I prepared this as an answer to my friend's argument rather than anything else.

MR. McRUER: There are a lot of calculations in it that I shall have to have my experts look into and see what they are.

Page 16916 follows

THE CHAIRMAN: We will let it stand over.

Mr. [illegible]: I am sorry, my lord. I prepared this as an answer to my friend's argument rather than anything else.

Mr. [illegible]: There are a lot of ramifications in it that I shall have to have my experts look into and see what they are.

Page 1645 follows

MR. KELLOCK: I think, my lord, I would like to deal now with section "F" of my brief which deals with tariffs.

" So long as exporting countries have:

(a) Lower labour costs.

(b) Lower overhead costs consequent thereon,

(c) Depreciated currencies acting as a bonus on exports,

(d) Lower taxes on industry, and

(e) Are prepared to sell for export at less than their own domestic prices,

so long will protective measures be required in an importing country to maintain an industry subject to these competitive conditions. Unless duty rates and customs regulations at least equalize the landed costs from the exporting country and the costs of production in the importing country, the industry in the importing country cannot permanently continue to provide employment."

One does not get protection, in the ordinary sense in which that word is used,unless the costs are at least equalized, my lord.

" In the case of the Canadian customs tariff the rates provided are not for the protection of home industries only but are also established to give customs tariff protection to British goods sold in the Canadian market as against goods originating in foreign countries. This Canadian policy of giving a preference"--

THE COMMISSIONER: Pardon me a moment.

MR. KELLOCK: My lord, I should perhaps pause there to refer your lordship to article nine of what we call the Ottawa Agreement which deals with that.

THE COMMISSIONER: What does it say?

MR. KELLOCK: "His Majesty's Government in Canada will invite Parliament to pass the legislation necessary to substitute for the duties of customs now leviable on the goods specified in Schedule E the duties shown in that Schedule, provided that nothing in this Article shall preclude His Majesty's Government in Canada from reducing the duties specified in the said Schedule so long as the margin of British preference shown in that Schedule is preserved or from increasing the rates under the intermediate or general tariff set out in the said Schedule."

Now, schedule E, my lord -- I am reading from the Imperial Economic Conference, 1932, Report of the Conference, Supplementary Volume, Annex 5, including texts of the trade agreements concluded during the Conference, printed by the King's Printer in 1932. Now, schedule E, which commences at page 56 and runs over to 66, sets out not only the British preferential rates but also the intermediate and general rates, and so far as textiles are concerned there are quite a large number of items to be found on pages 63 to 65, and as I refer to them later on your lordship will see that most, if not all, of the important duty items

The Speaker: Motion No 9 carried.

Mr. [illegible]: My lord, I should perhaps pause there to refer your lordship to article nine of what we call the Ottawa Agreement which deals with that.

The Speaker: What does it say?

Mr. [illegible]: "His Majesty's Government in Canada will invite Parliament to pass the legislation necessary to substitute for the duties of customs now leviable on the goods specified in schedule F the duties shown in that schedule, provided that nothing in this article shall prevent His Majesty's Government in Canada from reducing the duties specified in the said schedule to zero or the imposition of fiscal preference shown in that schedule is preserved or from increasing the rate under the intermediate or general tariff set out in the said schedule."

Now, schedule F, my lord -- I am reading from the Imperial Economic Conference, 1932, report of the [illegible], [illegible] volume [illegible] 6, including [illegible] of the trade agreements concluded during the conference, printed by the Stationery Office in 1932. Now, schedule F, which commences at page 88 and runs over to 89, sets out not only the fiscal preferences -- but also the intermediate and general rates, so far as articles are concerned. There are quite a large number of items to be found on pages 88 to 89. [illegible] I shall on your lordship will see that [illegible], if not all, of the [illegible]

of 1932 which my friend sets out in his brief, are specifically provided for in the agreement, in this schedule, and the spread between the British preferential rate and the intermediate and general rates is also provided for, and the treaty is a contract that the spread shallbe preserved.

THE COMMISSIONER: Yes, I know, but the article you read to me has nothing, it seems to me, if I understood it correctly, that the British delegates could have objected to. The Government of Canada holds itself free to give them greater protection.

MR. KEILOCK: Yes, so long as the spread is maintained.

THE COMMISSIONER: They won't give them any less and they may give them more.

MR. KEILOCK: They bind themselves not to give any less and they may give more.

THE COMMISSIONER: And hold themselves free to give them more.

MR. KEILOCK: As a matter of fact, they did give them more in subsequent years, as we will see, but the spread is there, and that is the basis for my contention, my lord, set out in paragraph two, that the rates provided -- I should perhaps say the intermediate and general rates -- I submit they are not for the protection of home industries only but are also established --

THE COMMISSIONER: They do work out that way, but you are only involving the question. As a matter

of 1928 which the Tribunal sets out in his report, was specifically provided for in the agreement, in this solution, and the mutual between the British Government and the Irish Free State and several cases is also provided for, and this treaty is a contract that the agreed analysis recovered.

The Chairman: Yes, I know, but the article you read to us has nothing, it seems to me, if I understood it correctly, that the Italian delegation would have objected to. The Government of Canada would itself free to give them greater protection.

Mr. Hudson: Yes, so long as the agreed is reciprocal.

The Chairman: Then we'd give them the same as they may give them more.

Mr. Hudson: They did therefore not to give any less and they may give more.

The Chairman: and hold themselves free to give them more.

Mr. Hudson: In a treaty of peace, they will give them more in subsequent years, as we did, but the ground is there, and that is the basis for a constitution, by land, set out in paragraph two, that the r.ss involved -- I should perhaps say the inhabitants and general votes -- I mean they are not for the protection of some inhabitants only but are also inhabitants --

The Chairman: Then do you say that only the -- you will remove the phrase. As a politi-

of fact, here the Government is treating with three different units, three different sets of tariff rates, one for the world at large, the general; a second one for favoured nations, the intermediate, and the third one for the British. That is the cheapest one. That is what it is. Of course one is protected against the other. You might say those who enjoy the intermediate rates are protected by the general rate against others. You are only defining when you try to put it that way.

MR. KELLOCK: Is there not something in my contention when I say --

THE COMMISSIONER: I say it is a fact that those who enjoy the British colony figure are protected against intermediate and general competition, but likewise those who come under intermediate tariff are protected against general competition.

MR. KELLOCK: Right.

THE COMMISSIONER: So it is only refinement to set it out. Those things follow naturally.

MR. KELLOCK: Except this, my lord, and this is the aspect I have in mind, and that is my friend cannot say that the intermediate rate and general rate which produced this price is there simply on my account. It is also there on account of --

THE COMMISSIONER: Well, that argument is not one bit stronger than the one that the intermediate rate is there on account of -- what are they -- the United States, France and so on, to help them out as against the poor nations that have to go into

of fact, here the Government is trading with three different units, three different sets of tariff rates one for the world at large, the general; a second one for favoured nations, the intermediate, and the third one for the British. That is the eleventh one.

That is what it is. Of course one is protected against the other. You might say those who enjoy the intermediate rates are protected by the general rate against others. You are only defeating when you try to put it that way.

MR. BENNETT: Is there not something in my contention when I say --

THE CHAIRMAN: I say it is a fact that those who enjoy the British colony tariffs are protected against intermediate and general competition, but likewise those who come under intermediate tariff are protected against general competition.

MR. BENNETT: CONTINUED:

THE CHAIRMAN: So it is only refinement to set it out. These things follow naturally.

MR. BENNETT: Except this, my lord, and this is the aspect I have in mind and that is my friend cannot say that the intermediate rate and general rate which produced this price is there simply on my account. It is also there on account of --

THE CHAIRMAN: Well, that argument is not one bit stronger than the one that the intermediate rate is there on account of -- what are they -- the United States, France and so on, to help them out as against the poor nations that have to go into

the outer darkness of the third region.

MR. KELLOCK: Except in the case of Great Britain--

THE COMMISSIONER: Those things are true. They are facts. Nations which come under the intermediate rate have a preference over those under the general rate.

MR. KELLOCK: Yes.

THE COMMISSIONER: Surely they have, and those under the British rate have a preference over the two others. Now, we know that. What is the use of trying to bring out some principle?

MR. KELLOCK: It does occur to me --

THE COMMISSIONER: But the whole three though are meant to give protection in varying degrees to the Canadian industry.

MR. KELLOCK: Quite right; I do not dispute that at all. All I do call attention to is this is the subject matter of a treaty, this spread. This spread is designed --

THE COMMISSIONER: They are all subject matters of treaties. Those that come within the intermediate rate got there by virtue of treaties.

MR. KELLOCK: Yes, but that is subject to change at any time. This was a treaty which was to operate for --

THE COMMISSIONER: Well, for three or four or five years.

MR. KELLOCK: Five years; it expires some time this year.

the outer derivees of the this region.

Mr. Hellmuth: Except in the case of treaty implementation (Indian); These treaties are true. They are facts. Nations which come under the international rule have a preference over those under the municipal rule.

Mr. Hellmuth: Yes.

THE CHAIRMAN: Merely they have, and those under the municipal rule have a preference over the [illegible]. [illegible] is the idea of trying to bring out some principle?

Mr. Hellmuth: It does occur to me --

THE CHAIRMAN: But the whole thing usually are meant to give protection in varying degrees to the convention internally.

Mr. Hellmuth: Quite right; I do not limit it at all. I do call attention to it this is the subject matter of a treaty, this spread. This spread is designed --

Mr. Hellmuth: They are all subject matters of the time. Those that come within the international rule get there by virtue of treaties.

Mr. Hellmuth: Yes, but that is subject to change at any time. This was a treaty which was to endure for --

THE CHAIRMAN: Well, for three or four or five years.

Mr. Hellmuth: Five years; it expires some time this year.

THE COMMISSIONER: There is no use complicating the situation. You have three different classes of countries made more or less favourable according to the classes, and in the whole three classes the design is to protect Canadian industry, less against British producers than against the others, less against intermediate countries than against the other one.

MR. KELLOCK: I go on to say, my lord, in the second sentence in paragraph two --

"This Canadian policy of giving a preference to British goods was established about forty years ago. So far as the textile schedules in the present Canadian customs tariffs are concerned the effective rates, generally speaking, are the British Preferential rates, the spread between these rates and the intermediate or treaty rates being the customs tariff protection given the British manufacturer for his exports to the Canadian market as against foreign countries. This spread to be effective as against exports from foreign countries must be in excess of an amount which equalizes the landed costs of goods from Great Britain and similar goods from foreign countries".

THE COMMISSIONER: That is to say you would justify-- I am using that word in a loose way -- the exclusion of American cotton so as to give a preference to the British producer.

MR. GORDON: There is no use complicating the situation. You have three different classes of countries made more or less favourable according to the classes, and in the whole three classes the design is to protect Canadian industry, less against British producers than against the others, less against intermediate countries than against the other.

MR. BELCOURT: I go on to say, my lord, in the second sentence in paragraph two --

"This Canadian policy of giving a preference to British goods was established about forty years ago. So far as the textile schedules in the present tariff are concerned the effective rates, generally speaking, are the British Preferential rates, the spread between these rates and the intermediate or treaty rates being the customs tariff protection given the British manufacturer for his exports to the Canadian market as against foreign competition. This spread to be effective as against exports foreign countries must be in excess of an amount which equalizes the landed costs of goods from Great Britain and similar goods from foreign countries."

MR. GORDON: That is to say you would just I am using that term in a loose way -- the exclusion of American cotton so as to give a preference to the British manufacturer.

MR. KELLOCK: That is part of the consideration he got in the treaty. I go on to say, my lord --

"The intermediate or treaty rates in the Canadian tariff are, therefore, not necessarily an equalization of the cost of production in Canada and the landed costs of goods from foreign countries",

because on the basis of article 11 that is the situation as between Great Britain and Canada, and if Great Britain is to be given a preference then these other rates must be higher.

THE COMMISSIONER: Well, must be exclusive, would you say?

MR. KELLOCK: No, I do not say that. My lord, I intended to say in connection with my opening paragraph there, where I deal with the necessity for duties in view of all these conditions, I just wanted to call your lordship's attention again to article nine. Your lordship has a note of it before on a number of occasions, but my point is that that article recognizes a difference between -- article 11 recognizes a difference --

THE COMMISSIONER: Not article nine?

MR. KELLOCK: No, article 11, I am sorry.

THE COMMISSIONER: Where do you refer to article 11, in the first paragraph?

MR. KELLOCK: In connection with paragraph one I should have referred your lordship to article 11 which says--

" His Majesty's Government in Canada undertake that during the currency of this Agreement the tariff shall be based on the principle that protective duties shall not exceed such a level as will give United Kingdom producers full opportunity of reasonable competition on the basis of the relative cost of economical and efficient production, provided that in the application of such principle special consideration may be given to the case of industries not fully established".

That recognizes that in the case of industries not fully established, which one might call infant industries, if you like, there is to be some more consideration --

THE COMMISSIONER: That is a question I was asking the other day. When does an infant cease to be an infant?

MR. KELLOCK: I don't know. The language is here - "industries not fully established", and the treaty recognizes that such industries should not be put merely on the basis of competition on the basis of the exact relative cost of production.

MR. McRUER: And these people build up some reserves.

MR. KELLOCK: An industry that is fully established, then it is to be put, as between Great Britain and Canada, on the basis of reasonable competion having regard to relative costs of production.

"His Majesty's Government in Canada undertake that during the currency of this Agreement the tariff shall be based on the principle that protective duties shall not exceed such a level as will give United Kingdom producers full opportunity of reasonable consideration on the basis of the relative cost of economical and efficient production, provided that in the application of such principle special consideration may be given to the case of industries not fully established".

That recognizes that in the case of industries not fully established, which one might call infant industries, if you like, there is to be some special consideration --

THE COMMISSIONER: That is a question I was asking the other day. When does an infant cease to be an infant?

MR. ROBERTS: I don't know. The language is here - "industries not fully established", and the treaty recognizes that such industries should not be put merely on the basis of competition on the basis of the exact relative cost of production.

MR. MORRIS: And these people built up some year

MR. ROBERTS: As I understand that it is fully established then it is to be put, as between Great Britain and Canada, on the basis of reasonable competition having regard to relative costs of production.

THE COMMISSIONER: Is the textile industry one of those that still requires some nursing?

MR. KELLOCK: No, I say the textile industry, my lord, is fully established. All I am struggling for, my lord, is that we may continue to exist. Paragraph three, my lord -- before I go on to that, my lord, I have taken from exhibit 1324 a table which shows, in the first place, the average ad valorem duty rate on dutiable imports, and in the next column the average ad valorem duty rate on total imports.

THE COMMISSIONER: Yes, I see. That is a useful thing to have. We better make it an exhibit.

MR. McRUER: Does dutiable imports mean dutiable from Great Britain or dutiable from other countries?

THE COMMISSIONER: This doesn't refer to Great Britain, does it?

MR. KELLOCK: It is not limited to Great Britain.

THE COMMISSIONER: You have not prepared one for Great Britain?

MR. KELLOCK: No, but we can.

THE COMMISSIONER: Yes, because the question was raised the other day principally about British importations. However, I am glad to have this. We will make this exhibit 1342.

EXHIBIT NO. 1342: Average ad valorem duty rate on dutiable imports and total imports.

MR. McRUER: So that we may understand it the average is taken to be the average rate irrespective of the volume?

The [illegible]: Is the textile industry one of those that still requires some assuring?

Mr. [illegible]: No, I say the textile industry, my lord, is fully established. If I am struggling for, my lord, is that we may continue to exist. [illegible] there, my lord -- before I go on to that, my lord, I have taken from exhibit 1944 a table which shows, in the first place, the average ad valorem duty on dutiable imports, and in the next column the average ad valorem duty rate on total imports.

The [illegible]: Yes, I see. That is a useful thing to have. Is better make it an exhibit.

Mr. [illegible]: Does British imports mean British from Great Britain or British from other countries?

[illegible] British, does it?

Mr. [illegible]: It is not limited to Great Britain.

The [illegible]: You have not prepared one to Great Britain?

Mr. [illegible]: No, but we can.

The [illegible]: Yes, because the question was raised the other day principally about British imports. However, I am glad to have this. We will make this exhibit 1945.

EXHIBIT NO. 1945: average ad valorem duty rate on dutiable imports and total imports.

Mr. [illegible]: So that we may understand it the average is taken to be the average rate irrespective of the volume?

MR. KELLOCK: No, I don't think that is right.

MR. McRUER: Do you take the volume of each --

MR. KELLOCK: My friend, Mr. Berry, says we would not do it like that. I will find out how it was done.

MR. McRUER: That is the way the Canadian Manufacturers Association did it in their publication to the public. Let us see how it is worked out.

MR. KELLOCK: It is taken from exhibit 1324, as it is stated.

THE COMMISSIONER: Taken from where?

MR. KELLOCK: Exhibit 1324, as it states, my lord, at the upper left hand corner, and what was done was to take the duties, the value of the duties in dollars and cents was given, and compare them to the value of the imports, to the dutiable imports in the one case and the total imports in the other. I did not take the rates of duty and add them together and divide by six.

MR. McRUER: You would take the duties of all different categories, intermediate --

MR. KELLOCK: What the exhibit shows, all the duties.

MR. McRUER: You would mix the rates applicable from Great Britain with --

THE COMMISSIONER: I understand we are to have a separate sheet about Great Britain.

MR. KELLOCK: Yes, my lord.

SECRETARY WHITELEY: The only error that occurs at times is during the period of fixed valuations; isn't

MR. KNOX: No, I don't think that is right.

MR. MORROW: Do you take the volume of each --

MR. KNOX: My friend, Mr. Henry, says we would not do it like that. I will find out how it was done.

MR. MORROW: That is the way the duties are calculated and it is just publication to the public. Let us see how it is worked out.

MR. KNOX: It is taken from exhibit 1984, as it is stated.

THE COMMISSIONER: Taken from where?

MR. KNOX: Exhibit 1984, as it states, my lord, at the upper left hand corner, and what was done was to take the nations, the value of the duties in dollars and cents was given, and compare them to the value of the imports, to the dutiable imports in the one case and the total imports in the other. I did not take the rates of duty and add them together and divide by six.

MR. MORROW: You would take the nations of all different exchanges, presumably --

MR. KNOX: Yes, I do. Take all the duties.

MR. MORROW: You would mix the rates applicable from Great Britain with --

THE COMMISSIONER: I understand we are to have a separate sheet about Great Britain.

MR. KNOX: Yes, my lord.

COMMISSIONER MORROW: The only reason that course is taken is during the period of fixed exchanges in

that correct?

MR. HALLAM: Yes, but that will include that.

MR. McRUER: It doesn't include dumping duties.

SECRETARY WHITELEY: It is based on a rate other than the invoice rate. The duty is lower than it actually is on the invoice value.

THE COMMISSIONER: It looks lower.

SECRETARY WHITELEY: The rate as set forth.

THE COMMISSIONER: The rate itself is lower. The effect on the invoice is higher.

SECRETARY WHITELEY: This does not represent the rate of duty on the invoice.

MR. KELLOCK: That is the case in exhibit 1324. You do not take the invoice value; you take the fixed value.

SECRETARY WHITELEY: It applies to both exhibits, this one and the one from which it is taken.

MR. KELLOCK: All I am doing is figuring out on the basis of the exhibit. There are no other figures that I know of.

THE COMMISSIONER: Well, we know what it is and where it is from.

MR. KELLOCK: My lord, in 1929 the average rate on the dutiable imports --

THE COMMISSIONER: You can come back to that later.

-- The Commission adjourned for a short recess.

-- On resuming.

MR. McRUER: My lord, before my friend goes on to

and correct?

MR. [illegible]: Yes, but that will include that.

MR. [illegible]: It based[illegible] [illegible] [illegible].

[illegible] MR. FINLAY: It is based on a rate other than the invoice rate. The duty is lower than it actually is on the invoice value.

[illegible]

MR. [illegible]: The rate as set forth.

THE COMMISSIONER: The rate itself is lower.

[illegible]

the rate of duty on the invoice.

MR. FINLAY: That is the case in exhibit [illegible]. You do not take the invoice value; you take the fixed value.

MR. FINLAY [illegible]: It applies to both exhibits this one and the one from which it is taken.

MR. [illegible]: All I am doing is figuring out on the basis of the exhibit. There are no other figures that I know of.

THE COMMISSIONER: Well, we know what it is and where it is from.

MR. FINLAY: My [illegible], in 1929 the average rate [illegible] —

THE COMMISSIONER: You can come back to that later.

— the commission adjourned for a short recess.

— [illegible]:

MR. [illegible]: [illegible]

deal with the question of tariff I think that we should put in the statements that your lordship asked for in regard to the duties collected on goods over a period of years, and Mr. Hooper has prepared an exhibit with his characteristic care.

THE COMMISSIONER: Is this all one exhibit?

MR. McRUER: Yes, my lord.

THE COMMISSIONER: 1343.

EXHIBIT NO. 1343: Import duties collected 1907 to 1937.

MR. McRUER: It deals with different classes of textiles, and he has classified them under the various tariff items in different columns, and shows the customs duties collected under each item, and the percentage that each item bears to one another. Take, for instance, in the second column, these are the totals of the goods enumerated in columns eight to twenty-five. That, your lordship will see, comprises yarns and woven fabrics, socks and stockings, ribbons, blankets and so on. Now, commencing in 1908, for instance, the total customs duties collected on all these goods amounted to $9,628,000.

THE COMMISSIONER: Where do I find that?

MR. McRUER: In column two, in 1908.

THE COMMISSIONER: Yes, I see. Those are millions?

MR. McRUER: They are in thousands -- the thousands are omitted, and they rose in 1920 to a high point, and in 1929 to $21,499,000 and in 1936 they amounted to $8,276,000. Now, your lordship will see all textiles and manufactures thereof are in column four.

deal with the question of tariff I think that so should put in the statement that your locality being for in regard to the duties collected on goods over a period of years, and Mr. Hooper has promised to submit with his statement this case.

The Chairman: Is this all one exhibit?

Mr. McKenzie: Yes, or two.

The Chairman: Look.

Secretary of Mr. Hall: Exhibit No. 1047.

Mr. McKenzie: It deals with different classes of textiles, and I have classified them under the various tariff items in different columns, and shows the customs duties collected under each item, and the percentage that each item bears to one another. For instance, in the second column, there is the total of the goods enumerated in column eight under classification. The [illegible] cotton, [illegible] yarns and woven fabrics, socks and stockings, clothing, clothing and so on. Now, commencing in 1902, for instance, the total customs duties collected on all these goods amounted to $3,083,000.

The Chairman: Down to 1 that year

Mr. McKenzie: In column two, in 1903.

The Chairman: Yes, I see. Those are million

Mr. McKenzie: They are in thousands -- the thousands are omitted, and they rose in 1903 to a high point, and in 1909 to $1,415,000 and in 1910 they amounted to $1,[illegible]. Now, your Lordship will see that the duties [illegible]

THE COMMISSIONER: You just said thousand; that should be million.

MR. McRUER: Yes, $8,276,000.

MR. KELLOCK: I wonder if my friend can tell me why the difference between this and exhibit 1342. For instance, take the year 1929--

THE COMMISSIONER: Show me 1342.

MR. KELLOCK: Exhibit 1324, my lord. Take the year 1929, and on this last exhibit the figure is $21,499,000, and on 1324 for 1929 the figure is $31,989,000.

THE COMMISSIONER: You say on 1324; you said 1342.

MR. KELLOCK: I am sorry, 1324, my lord.

MR. McRUER: Let me have 1324 and we will see what it is. What is it you are talking about?

MR. KELLOCK: Take the figure of duty collected as shown by 1324.

MR. McRUER: What year?

MR. KELLOCK: In the year 1929; you see that figure of $31,989,000?

MR. McRUER: Yes.

MR. KELLOCK: Then, if you go to this last exhibit --

MR. McRUER: It is just the same. Look at column four. You will find it is exactly the same figure.

MR. KELLOCK: I see what you mean, alright, I was looking at the first column and that is only part of the duties.

THE COURT REPORTER: You just said thousands; it should be millions.

MR. [illegible]: Yes, [illegible].

MR. [illegible]: I [illegible] you [illegible] me why the difference between this and exhibit [illegible] for instance, take the year 1960--

THE [illegible]: [illegible].

MR. [illegible]: Exhibit 1594, my lord. Take the year 1960, and on this last exhibit the figure is $21,[illegible],000, and on Item for 1960 the figure is $21,[illegible],000.

THE [illegible]: You say on 1594; you said 1[illegible]

MR. [illegible]: I am sorry, 1594, my lord.

MR. [illegible]: Let us have 1594 and we will see what it is. What is it you are talking about?

MR. [illegible]: Take the figure of [illegible] as shown by 1594.

MR. [illegible]: What year?

MR. [illegible]: In the year 1960; you see the figure of $21,[illegible],000?

MR. [illegible]: [illegible].

MR. [illegible]: Now, if you go to this Item exhibit --

MR. [illegible]: It is just the same. Look at column four. You will find it is exactly the same figure.

MR. [illegible]: I see that you are right, [illegible]. I was looking at the first column and that is [illegible] of our [illegible].

MR. McRUER: That just deals with those goods enumerated in columns eight to twenty-five. They are specified there.

THE COMMISSIONER: On those goods, only from eight to twenty-five, the amount collected in 1929 was $21,499,000.

MR. McRUER: Yes.

THE COMMISSIONER: That is not exhaustive of textiles?

MR. McRUER: That is not exhaustive of textiles. Column four is exhaustive of all textiles and manufactures thereof. That is $31,989,000 for the year.

THE COMMISSIONER: Yes, the first column just gives the year, yes. Column four, $31,989,000 for all textiles and manufactures thereof and last year that figure was $11,890,000.

MR. McRUER: Now, your lordship, column six gives all goods.

THE COMMISSIONER: There again 1929 was the peak, wasn't it?

MR. McRUER: It was $200,000,000.

THE COMMISSIONER: That is the biggest year.

MR. McRUER: The biggest year. Next to it was 1921, apparently, $197,000,000.

ASSISTANT SECRETARY RENE: 1930.

MR. McRUER: Yes, 1930 was next.

THE COMMISSIONER: $199,000,000,

MR. McRUER: Yes, it was pretty close. Those are the three big years.

Mr. [illegible]: That just deals with those goods enumerated in columns eight to twenty-five. They are specified there.

The [illegible]: On those goods, only those enumerated in columns eight to twenty-five, the amount collected in 1947 was $[illegible],000,000.

Mr. [illegible]: Yes.

Mr. [illegible]: That is not exclusive of textiles?

Mr. [illegible]: That is not exclusive of textiles. Those are in excess of all textiles and manufactures thereof. The [illegible] is $[illegible],000,000 for the year.

Mr. [illegible]: Yes, the first column that is the year, yes. [illegible] $[illegible],000,000 for all textiles and manufactures thereof and last year's that figure was $[illegible],000,000.

Mr. [illegible]: Now, your [illegible], column six [illegible] all goods.

Mr. [illegible]: There again they are by [illegible] [illegible]

Mr. [illegible]: [illegible]

Mr. [illegible]: What is the [illegible] year.

Mr. [illegible]: The [illegible] year. [illegible] to it was 1947, approximately, $[illegible],000,000.

[illegible]

Mr. [illegible], last year.

[illegible] $[illegible],000,000.

Mr. [illegible]: Yes, it was [illegible] figure. [illegible] the three big years.

THE COMMISSIONER: That went down last year to $82,784,000.

MR. McRUER: Yes, my lord.

MR. KELLOCK: The percentage under column five, my lord, stands up throughout those years.

THE COMMISSIONER: Pardon?

MR. KELLOCK: The percentage in column five stands up from 1930 on fairly consistently. That is the percentage of duties paid on textiles as compared to total duties paid.

MR. McRUER: No; if your lordship will notice, in 1920 one-fifth of the total revenue from imports came from textiles.

MR. KELLOCK: What year?

MR. McRUER: In 1920.

THE COMMISSIONER: 1920?

MR. McRUER: Yes.

THE COMMISSIONER: Textiles produced $39,694,000.

MR. McRUER: Or take 1921, it was 21.5%. They produced $42,000,000 whereas in 1930 it was down to 14.3% and in 1935 it was 13.8% of the share of the total revenue.

MR. KELLOCK: Take the period from 1930 to the end of the sheet and it is fairly uniform.

MR. McRUER: Oh well, that may be true, uniformly low.

MR. KELLOCK: Even 1929; 1929 would be mostly the calendar year 1928.

MR. McRUER: But it shows that from 1920 on down

the percentage of duties collected in regard to textiles to all duties collected has been diminishing.

MR. KELLOCK: No, it went up in 1921 and 1922.

MR. McRUER: I said from 1920 -- well, from 1921 on down. We do not need to worry about the precise year; over the period there has been a diminution of the amount of duties collected from textiles as compared with duties collected from all sources.

MR. KELLOCK: 1925 was almost the same as 1921.

MR. McRUER: If it had amounted to 20% in 1926 we would have had about $5,000,000 more. Of course, on the other hand revenue is less than half, by a good bit, than it was in the year 1929.

MR. KELLOCK: The dollar value has gone down too.

MR. McRUER: I am talking about revenue.

(page 16935 follows)

MR. KELLOCK: I don't know - does this Exhibit include excise tax?

MR. McRUER: No.

THE COMMISSIONER: This is just custom.

MR. HOOPER: This is Customs Duties, my lord, and that does not include excise tax ---

MR. KELLOCK: Does it include currency dumping duty?

MR. HOOPER: No, does not include currency dumping duty.

THE COMMISSIONER: This is just the ad valorem and specific duty.

MR. KELLOCK: My lord, I was just calling your attention to Exhibit 1342 which had been filed.

THE COMMISSIONER: This last one?

MR. KELLOCK: Yes, my lord. The first column shows the "Average ad valorem duty rate on dutiable imports," and the next column, "Average ad valorem duty rate on total imports," and the next column "Percentage of duty-free imports." In 1929 the rate on dutiable imports was 24.5% and on the total import 15.5%, the percentage of duty-free imports being 37%. In 1930 the rate on dutiable import was 25%, on the total import 16.3 % and the percentage of duty-free imports 35%. In 1931 the rate on dutiable import was 27.8%, on total imports 18.7% and the percentage of duty-free import, 33%. In 1932 the rate on dutiable import was 35.9%, on total

MR. HELLMUN: I don't know - does that mainly

[illegible] Sales Tax

MR. [illegible]: No.

THE CHAIRMAN: This is just another.

MR. MOTTER: This is another bottle, my lord, and that does not include sales tax ---

MR. HELLMUN: Does it include currency exchange duty

MR. [illegible]: No, does not include currency exchange duty.

THE CHAIRMAN: This is just the ad valorem and specific duty.

MR. HELLMUN: My lord, I was just calling your attention to exhibit 1066 which had been filed.

THE CHAIRMAN: Yes, they just

MR. HELLMUN: Yes, my lord. The first column shows the "average ad valorem duty rate on dutiable imports," and the next column, "average ad valorem duty rate on total imports," and the last column "percentage of duty-free imports." In 1964 the rate on dutiable imports was 14.8% and on the total import 12.8%, the percentage of duty-free imports being 8%. In 1965 the rate on dutiable import was 16%, on the total import 13.3% and the percentage of duty-free imports 8%. In 1966 the rate on dutiable import was 17.2%, on total imports 1.7% and the percentage of duty-free imports, 9%. In 1967 the rate on dutiable import was 18.9%, on total

imports 22.4% and the percentage of duty-free import commenced to rise and goes up to 38%. In 1933 the rate on dutiable import was 33.7%, on total import 18.2% and the percentage of duty-free imports goes up to 46%.

MR. McRUER: I want to see if I understand that. In making up that statement do you include the imports from Great Britain as dutiable where they are dutiable under the intermediate or general but free from Great Britain.

MR. KELLOCK: I am not sure that I follow you.

MR. McRUER: Where there are goods that come in from Great Britain under the British Preference free but they are dutiable under the intermediate or general tariff, do you include them as dutiable?

MR. KELLOCK; I do not understand that.

MR. McRUER: It is quite clear.

THE COMMISSIONER: Yes, you take the same article, for instance comes in free from Great Britain but it is dutiable under the intermediate and general tariff. Mr. McRuer wants to know how you count it here - is it free or dutiable? I think you took everything that came in and if it is free you put it in one column and if it is dutiable you put it in another.

MR. McRUER: That is the case but if there are importations from Great Britain, we will say, of cotton yarns - that is free from Great Britain but

[illegible] [illegible] [illegible] [

dutiable from another country - you include that as a free article, not as a dutiable one.

MR. KELLOCK: The imports that come from Great Britain are in the outside column. The imports that come from another country are in the other two columns.

THE COMMISSIONER: What do you mean by that? The outside column is: "Percentage of duty-free imports."

MR. KELLOCK: To the total.

THE COMMISSIONER: There are free imports from other countries besides from British Dominions.

MR. KELLOCK: They would also be in the outside columns.

THE COMMISSIONER: No matter where it came from.

MR. KELLOCK: Yes.

MR. McRUER: To arrive at 25% as the average - now, there must be a volume of articles, say 100,000 yards.

MR. KELLOCK: It is not 100,000 yards, it is dollars.

MR. McRUER: If you are going to arrive at the percentage of dutiable imports you have to have regard to the volume.

THE COMMISSIONER: This must be based on duties paid.

MR. KELLOCK: Yes, my lord. This is dollars.

MR. McRUER: You may import cotton and say that

dutiable from another country - you include that as a free article, not as a dutiable one.

MR. KELLOCK: The imports that come from areas situated in the outside column. The imports that come from another country are in the other two columns.

THE CHAIRMAN: What do you mean by that? The outside column is: "Percentage of duty-free imports."

MR. KELLOCK: To the total.

THE CHAIRMAN: There are free imports from other countries besides from British Commonwealth.

MR. KELLOCK: They would also be in the outside column.

THE CHAIRMAN: It makes it more.

MR. KELLOCK: Yes.

MR. MORGAN: To arrive at 8% as the average - now, there must be a volume of articles, say 100,000 pounds.

MR. KELLOCK: It is not 100,000 pounds, it is dollars.

MR. MORGAN: If you are going to arrive at the percentage of dutiable imports you have to have regard to the volume.

THE CHAIRMAN: This must be based on dollars and.

MR. KELLOCK: Yes, my lord. This is dollars.

MR. MORGAN: You are talking about cotton and say that

is a dutiable import but it comes from England free, but from the United States---

MR. KELLOCK: Yes, that is only confusing.

MR. McRUER: The reason I ask that is because in making up their average duty on cotton the Canadian Manufacturers Association did it in the way I suggest and I want to know whether this is in the same way or different way.

MR. KELLOCK: They are not my clients.

MR. McRUER: I am not blaming you at all.

MR. KELLOCK: I am taking Exhibit 1542 ---

MR. McRUER: Mr. Berry has explained how it is done. All right.

MR. KELLOCK: In 1933 the duty rate on dutiable imports was 33.7, on total import 18.2 and percentage of duty-free imports, 46%. In 1934 the rate on dutiable imports was 32.4, on total imports 14.6 and the percentage of duty-free imports was up to 55%. In 1935 the rate on dutiable imports was 31.8, on total imports 14.3 and the percentage of duty-free imports was 55%. In 1936 the rate on dutiable imports was 30.8, on total imports 13.2 and on percentage of duty-free imports was 57%.

As I point out there:

"The average ad valorem duty on all textile imports was lower in 1936 than in 1929 or 1930.

The average ad valorem duty on dutiable

is a dutiable import but it comes from England from, but from the United States---

MR. HALLCOX: Yes, but it is only conveying.

MR. HOWDEN: The reason I ask that is because in judging up their average duty on cotton the Canadian Manufacturers Association did it in the way I suggest and I want to know whether this is in the same way or different way.

MR. HALLCOX: They are not by clients.

MR. HOWDEN: I am not blaming you at all.

MR. HALLCOX: I am reading Mobile from ---

MR. HOWDEN: Mr. Berry has explained how it is done. All right.

MR. HOWDEN: In 1933 the duty rate on cotton imports was 32.7, on total imports 12.2 and percentage of duty-free imports, 40%. In 1934 the rate on cotton imports was [illegible], on total imports 12.1 and the percentage of duty-free imports was up to [illegible]. In 1935 the rate on cotton imports was [illegible], on total imports 14.3 and the percentage of duty-free imports was [illegible]. In 1936 the rate on cotton imports was [illegible], on total imports [illegible] and the percentage of duty-free imports was [illegible].

As I quite see Berry:

"The average in Canada duty on all textile imports was lower in 1936 than in 1934 or 1935."

textile imports rose from 25% in 1930 to 30.8% in 1936.

During the period 1929 - 1936 there has been a transfer of goods formerly dutiable to the free list. This accounts for the increase in the average rate of duty payable on goods still dutiable from 25% in 1930 to 30.8% in 1936.

In 1930 there was only 35% of imports on the free list.

In 1936 this had increased to 57%.

The result is that the increase in the average rate from 25% to 30.8% between 1930 and 1936 is more than compensated for by the increase in goods admitted free of duty from 35% to 57%."

MR. McRUER: Might I just interject. This is another of those percentage calculations that you can read to make something of which is not the correct picture. When you raise duties on the dutiable imports you decrease the import of dutiable goods and therefore the percentage of free goods is raised. If importing a million dollars of dutiable goods and a million dollars of free goods and raise the duty on the dutiable goods it is reduced to 100,000 and then you have increased the percentage of free goods.

MR. KELLOCK: Is my friend suggesting there was not a transfer of goods from the dutiable list to the

[illegible] imposed from [illegible] in June to [illegible] in [illegible].

During the period June - June there was been a transfer of goods formerly [illegible] to the free list. This accounts for the increase in the average rate of duty imposed on goods total dutiable from [illegible] to [illegible] in [illegible].

In 1906 there was only [illegible] of imports on the free list.

In 1909 this was increased to [illegible].

The result is that the increase in the [illegible] from free and to dutiable values has been in part been counterbalanced by the increase in goods admitted free of duty from the [illegible]. [illegible] that I just [illegible]. There is [illegible] of time [illegible] relations when you are [illegible] to keep something of which is not the general [illegible]. [illegible] you raise duties on the dutiable imports [illegible] the amount of dutiable goods and increase the percentage of free goods in [illegible]. [illegible] [illegible] of [illegible] goods and a [illegible] [illegible] of free goods. [illegible] [illegible] dutiable goods it is proved to [illegible] [illegible] [illegible] the [illegible] of other [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] a [illegible] of goods from the dutiable list to the

free list?

MR. McRUER: No, I am talking about the volume of goods coming in.

MR. KELLOCK: What I am saying in this is that there has been a heavy transfer--

THE COMMISSIONER: What you are pointing out, the higher you raise the tariff on dutiable goods and ---

MR. McRUER: The dutiable goods in 1929 were $130,000,000, whereas in 1936 they were $38,000,000.

MR. KELLOCK: My friend cannot say that is entirely due---

THE COMMISSIONER: So that the free entries were 57% of $38,000,000 in 1936?

MR. McRUER: Yes.

THE COMMISSIONER: What was the figure in 1930?

MR. McRUER: $130,000,000 in 1929.

THE COMMISSIONER: The free entries then were 37% of that.

SECRETARY WHITELEY: There are some of the dutiable and free.

THE COMMISSIONER: The free was 37% of that, according to this figure.

MR. McRUER: The dutiable imports in 1929 were $130,000,000. The free imports were $76,000,000.

THE COMMISSIONER: According to this the free imports were 37%.

MR. McRUER: That would be 37% of $130,000,000

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Free List?

MR. MONTON: No, I am talking about the volume of goods coming in.

MR. KNELLER: What I am saying in this is that there has been a heavy transfer--

THE CHAIRMAN: When you pay platform duty, the higher you raise the tariff on dutiable goods and ---

MR. MONTON: The dutiable goods in 1960 were $180,000,000, whereas in 1966 they were $2[illegible],000,000.

MR. KNELLER: My friend cannot say that is entirely due---

THE CHAIRMAN: So that the free entries were 27% of $[illegible],000,000 in 1966?

MR. MONTON: Yes.

THE CHAIRMAN: And on the figure [illegible]

MR. MONTON: $180,000,000 in 1966.

THE CHAIRMAN: The free entries then were 27% of that.

MR. MONTON: There are some of the national and free.

THE CHAIRMAN: The free was 27% of that, according to this figure.

MR. MONTON: The dutiable imports in 1966 were $180,000,000. [illegible]

THE CHAIRMAN: According to this the free [illegible]

MR. MONTON: [illegible]

plus $76,000,000 and in 1930 the dutiable imports were $121,000,000 and the free imports $64,000,000, but in 1931 the dutiable imports had droped from $121,000,000 to $87,000,000. The free imports had dropped in the same time to $42,000,000.

THE COMMISSIONER: Where is that?

MR. McRUER: In Exhibit 1324.

THE COMMISSIONER: What was the duty paid last year? Is that fiscal year or calendar year?

MR. McRUER: Fiscal year.

THE COMMISSIONER: Fiscal year, 1936 means the 31st of last March?

MR. KELLOCK: Yes.

THE COMMISSIONER: What was the duty paid on textiles during that year?

MR. McRUER: The total duty collected was $11,889,000.

THE COMMISSIONER: As against what in 1929?

MR. McRUER: $31,989,000.

THE COMMISSIONER: What, I meant to ask you, was the volume imported.

MR. McRUER: The volume imported in 1936, was $38,575,000 of dutiable imports and $51,238,000 of free imports.

THE COMMISSIONER: Now go back to 1929 and give me the same two figures.

MR. McRUER: The total import in 1929 was dutiable imports, $130,364,000 and free imports $76,074,000. So that ---

[illegible]

[illegible]

[illegible]

THE COMMISSIONER: That illustrates it.

MR. KELLOCK: There was a large increase in the free list, in proportion.

MR. McRUER: There was a large increase in duties.

MR. KELLOCK: $51,000,000 is a great deal higher percentage of the total, yes. Just bears out my contention. Take 1936, $51,238,000 are free imports and is a good deal higher percentage of the total of that figure than the $76,000,000 is of the figure of 1929.

MR. McRUER: Yes, you shut out the others and these free imports are largely raw materials.

MR. KELLOCK: Oh, no, that is not so. I don't know what the percentage is. Do you know what the percentage is? because there is quite a lot of manufactured stuff that is on the free list.

In paragraph 3, my lord, on page 1;

"Tariffs on imports of textiles into Canada are one aspect merely of the tariff situation. The industry itself has to use imported articles which are themselves subject to duty or has to buy such articles in Canada which would be dutiable if imported, and to pay sales tax (now 8%) on capital expenditures for machinery and buildings. Instances are to be found of machinery, even of a class or kind not made in Canada, which is dutiable. Exhibit 896 shows that in fiscal year 1935,

THE CHAIRMAN: That illustrates it.

Mr. MILLOCK: There was a large increase in the free list, in proportion.

Mr. MORROW: There was a large increase in duties.

Mr. MILLOCK: $21,000,000 is a great deal higher percentage of the total, yes. Just bears out my contention. Take 1908, $21,826,000 are free imports and is a good deal higher percentage of the total of that figure than the $76,000,000 is of the figure of 1909.

Mr. MORROW: Yes, you left out the others and these free imports are largely raw materials.

Mr. MILLOCK: Oh, no, there is not so. I don't know what the percentage is. So very large that the percentage lat becomes there is quite a lot of manufactured stuff that is on the free list.

In paragraph 5, my lord, on page 1:

"Tariffs on imports of textiles into Canada are one aspect merely of the tariff situation. The industry itself has to use imported articles which are themselves subject to duty or has to buy such articles in Canada which would be dutiable if imported, and to pay sales tax (now 5%) on equivalent expenditures for machinery and equipment. Machines are to be found of manufactory, even of styles or kind not made in Canada, which is outside (which DM above leaf in Vimmel year 1948).

the textile industry impprted into Canada $3,063,283 worth of machinery of a class or kind not produced in Canada of which $2,368,451 came from foreign countries, and on which $230,443.05 was paid in duty. In addition to this 6% sales tax was paid on the duty paid value of the import which would amount to $197,623.58 and 3% excise tax on the duty-paid value of imports from foreign countries, which would amount to $77,964,82. The duty, excise and sales tax paid by the Textile industry on machinery of a class or kind not made in Canada, therefore, amounted to over $500,000. Various kinds of supplies used by the industry, are also dutiable when imported, such as chemicals, soaps, oils, etc."

MR. McRUER : Excuse me, what are the rates on those, do you know? I tried to get this from some of the members of the Industry. I asked them what they paid in duties.

MR. KELLOCK: Are not they in the tariff?

MR. McRUER: I think the machinery is about 10% but I was wondering on those oils and soaps. It is a matter of interest.

MR. KELLOCK: We will have to look it up;.

"The wages, taxes, capital costs and other costs of the industry are all increased by reason

The Textile Industry imported goods known

[illegible] amount of machinery of a value of [illegible]

was produced in Canada to a value of $2,[illegible] and

from foreign countries, and on which $[illegible] was

paid in duty. In addition to this

sales tax was paid on the duty paid value of the

import which would amount to $[illegible] and

sales tax on the duty-paid value of imports

from foreign countries, which would amount to

$[illegible]. The duty, excise and sales tax

paid by the Textile industry on machinery of a

class or kind not made in Canada, therefore,

amounted to over $[illegible]. Various kinds of

supplies used by the industry, are also dutiable

when imported, such as chemicals, soaps, oils,

etc.

Mr. Martin: Perhaps you, what are the types on hand

do you know? I tried to get this from some of the

members of the industry. I asked them what they

paid in duties.

Mr. [illegible]: Are not many in the industry

Mr. [illegible]: I think the manufacturer in front of

me. I was thinking in terms of [illegible]. It is

a matter of [illegible].

Mr. [illegible]: We will have to look it up.

The wages, [illegible], central [illegible] and other

[illegible] of the industry are [illegible]

of the price-level established in Canada due to the various forms of assistance granted to other productive enterprises. There is also the excise tax of 3% on all raw materials coming in from foreign countries, including raw cotton and raw silk, while there is no excise tax on manufactured articles containing these raw materials if imported from Great Britain. As pointed out in the evidence, this excise tax constitutes an initial disadvantage to the Canadian Industry in competing with importations from Great Britain, the excise tax on raw cotton imported into Canada in 1935 amounting to a sum in excess of $445,000. It might also be noted that in the case of all published British, Preferential rates, over 15% ad valorem, or where such rates being a combination of ad valorem and specific comes to over 15% ad valorem, there is a 10% discount.

Another element which must be remembered in considering the protection which is afforded the industry by duties on importations of textiles is the drawbacks which apply to a number of these importations. Re-payments of duties by way of drawbacks on imported textiles used for further manufacture and exported from Canada amounted to about $460,000 in fiscal year 1936. Exhibit 881 also shows that on some of the drawback items for textiles consumed in Canada there was

of the price-level established in Canada due to the various forms of assistance granted to other textile industries. Since it was excise tax of 3% on all raw materials coming in from foreign countries, including raw cotton and raw silk, while there is no excise tax on manufactured cotton goods from raw materials if imported from Great Britain. As pointed out in the evidence, this excise tax constitutes an initial disadvantage to the Canadian industry in competing with importations from Great Britain, the excise tax on raw cotton imported into Canada in 1920 amounting to a sum in excess of [illegible]. It might also be noted that in the case of all published British, preferential rates, over 15% ad valorem, or where such rates being a combination of ad valorem and specific duties to over 15% ad valorem, there is a 15% discount.

Another element which must be considered in considering the protection which is afforded the industry by duties on importations of textiles is the drawbacks which apply to a number of these importations. Re-payments of duties by way of drawbacks on imported textiles used for further manufacture and exported from Canada amounted to about $[illegible],000 in fiscal year 1926.

[illegible]

paid $125,740 in the same period, which is a further deduction from the gross import duties collected.

Accordingly a recital of the rates of duty laid down in the Customs Tariff or a computation as an ad valorem duty of such rates as applied to any given product is not a true measure of the protection afforded to the industry."

One has to take into consideration that the industry has to pay, and my friend in his argument only looks at the rate on the article which the industry produced and does not anywhere refer to what the industry has to pay.

"The items in the tariff relating to importations of textiles into Canada are somewhat varied and it is proposed to deal with them in connection with the particular sections of the industry to which they refer."

And with regard to"cotton duties"--- I should have said here the British Preferential rate only, my lord.

THE COMMISSIONER: On the cotton duties?

MR. KELLOCK: Yes, my lord.

"The history of the tariff rates in effect at various dates on imports of cottons is shown in Exhibits 133, 507, 803, 804, 892, 893, 894, These exhibits show that the present tariff rates affecting cotton goods are now lower than they have

paid $1,740 in the same period, which is a further indication that not great degree relief collected.

Accordingly a careful of the rates of duty laid down in the Canadian Tariff or a comparison as on ad valorem duty of such rates as applied to any given product is not a true measure of the protection afforded to the industry."

One has to take into consideration what the country has to pay, and my friend in his argument only looks at the rate on the article paid the Canadian manufacturer and does not anywhere refer to what the industry has to pay.

"The issue in the tariff relating to importations of textilen into Canada are somewhat varied and it is proposed to deal with them in connection with the particular sections of the Canadian Customs Tariff."

And with regard to "cotton manufacture" I should have said here the British Preferential rate only, my lord.

THE CHAIRMAN: On the cotton industry?

MR. MILLER: Yes, my lord.

"The history of the tariff rates in effect at various times on imports of cotton is shown in Exhibits 1.6, 307, 308, 309, 310, 311, 312. These exhibits show that the present tariff rates

been for the greater part of the period since 1897 when these tariffs were first provided. For example- the preferential tariff rate on grey cotton fabrics, was 21.9% in 1897 and is now 15%, and the rate on cotton yarn coarser than 40's was 21.9% in 1897 and is now 12½%."

My friend in his argument rather criticized that protection.

THE COMMISSIONER: If I remember rightly he criticized your use of the word "average". It is a word that requires examination. You take a period from 1897 to 1936, that is 39 years, and the greater part of the period, as first read, would mean either the first more than the half or the second more than the half, and I understand that is not what you mean at all. You take a year here and there and add them together.

MR. KELLOCK: No, I have taken the whole period. I have a statement to show exactly what I meant. Perhaps I might give it to your lordship. This deals with the five most important ~~art~~ items.

MR. McRUER: This deals with yarn.

MR. KELLOCK: It deals with yarns and fabrics and take the first column which deals with yarns singles coarser than 40's, the first period is from 1897 to 1898, and the rate was ~~av~~ 21.9%. Then the next period is from 1898 to 1900, two years, the rate was 18¾%. Then from 1900 to 1906, 6 1/3 years, the rate

for the greater part of the period since 1897 when these tariffs were first provided. For example the preferential tariff rate on grey cotton fabrics, was 31.4% in 1897 and is now 12%, and the rate on cotton yarn coarser than 40's was 31.4% in 1897 and is now 12%."

Q. Given in his argument rather criticism that variation.

THE COURT: If I remember rightly he criticized your use of the word "average". It is a word that requires examination. You take a period from 1897 to 1926, that is 29 years, and the greater part of the period, as first read, would mean either the first more than the half or the second more than the half, and I understand that is not what you mean at all. You take a year here and there and put them together.

Mr. Kilmuir: No, I have been the whole period. I have a statement to show exactly what I meant. Perhaps I ought to give it to your lordship. This said that the five year increment are these.

Mr. Justice: Into months with years.

Mr. Kilmuir: It deals with yarns and fabrics but even the first column which with yarns which is coarser than 40's, the first period is from 1897 to 1907, the rate was 31.4%. Then the next period is from 1908 to 1912, the rate was 25%, the average, therefore

was 16 2/3rd %. Then from 1907 to 1922, 16 years, the rate was 17½%. From 1922 to 1928, 6 years, the rate was 15%. Then from 1928 to 1930, two years, it was 10% and 12½%. Then from 1930 to 1932, two years, it was 12½% plus 3 cents. That, of course, would be less 10, my lord. In 1932 to 1936, 4 years, it was 12½ plus 2 cents less 10. And 1936, 12½%.

THE COMMISSIONER: The less 10 only starts at 15.

MR. KELLOCK: Yes, my lord.

In order to prove that statement adding up the columns of the years there is 39 and a half years involved, of which with regard to this particular article ---

THE COMMISSIONER: There is your figure 39,½?

MR. KELLOCK: If your lordship adds my 37½ opposite "higher".

THE COMMISSIONER: You have not done it yourself.

MR. KELLOCK: I have it in my own copy.

THE COMMISSIONER: All these years together amount to 39½ years?

MR. KELLOCK: All the way down underneath these items.

THE COMMISSIONER: For instance you have this 1½, 2, 6 1/3, 16, &c., and that you say amounts to 39½.

MR. KELLOCK: It comes to slightly over a half, my lord.

THE COMMISSIONER: I did not mean to be pernickety about it but I thought you were making an accurate

[illegible] Then from 1877 to 1882, 16 years, the rate was 17%. From 1882 to 1888, 6 years, the rate was 19%. Then from 1888 to 1890, two years, it was 10% and 12%. Then from 1890 to 1892, two years, it was 12% plus 3 cents. That, of course, would be less 10, my lord. In 1892 to 1896, 4 years, it was 12% plus 3 cents less 10. And 1896, 12%.

THE CO-ARBITRATOR: The less 10 only starts at 18.

MR. [illegible]: Yes, my lord.

In order to prove that statement and bring up the scale of the years there is 36 and a half years involved, and I am [illegible] to this particular article ---

THE CHAIRMAN: Where is your figure 36.5?

MR. [illegible]: If your lordship sees my 275 [illegible] [illegible].

THE CHAIRMAN: You have not done it yourself.

MR. [illegible]: I have it in my own copy.

THE CHAIRMAN: [illegible] 1, 2, 3, 16, 30, and then you say amounts to 36.

MR. [illegible]: It comes to slightly over 2 a.m. [illegible].

THE CHAIRMAN: [illegible]

addition, but that is the column you mean?

MR. KELLOCK: Yes, and in 37½ years the rate was higher. For two years it was the same.

THE COMMISSIONER: That is it you said in your Factum?

MR. KELLOCK: I say, my lord, "These exhibits show that the present tariff rates affecting cotton goods are now lower than they have been for the greater part of the period since 1897 when these tariffs were first provided."

MR. McRUER: Now, you are just dealing here with the British Preferential Tariff?

MR. KELLOCK: That is all.

MR. McRUER: And of course the competition in these yarns would come from the United States, would not they?

MR. KELLOCK: No, I do not agree with that at all. That is your contention. And in taking that figure, the number of years where duty rates are higher across the page, adding the figures under each column for the years during which the rates are higher than at present the total is 123, in order to get the results ---

MR. McRUER: You are averaging them together?

MR. KELLOCK: I don't average them together, I am adding them together.

MR. McRUER: You cannot add grey goods.

MR. KELLOCK: I am not adding grey goods, I am adding years.

MR. McRUER: There was not 123 years.

MR. KELLOCK: I know there was not.

nation, but that is the column you want?

MR. MULOCK: Yes, and in 37½ years the rate was higher. For two years it was the same.

THE COURT ADJOURNED: What is it you said in your Factum?

MR. MULOCK: I say, my lord, "These exhibits show that the present tariff rates affecting wines are now lower than they have been for the greater part of the period since 1867 when these tariffs were first provided."

MR. [illegible]: Now, you are just dealing here with British Preferential Tariff?

MR. MULOCK: That is all.

MR. [illegible]: And of course the consumption of these wines from the United States, would not [illegible]

MR. MULOCK: No, I do not agree with that at all. That is your question. And in taking that figure the number of years above duty rates are higher across page, adding the figures under each column for the years during which the rates are higher than at present the total is 1.6, in order to get the result to ---

MR. [illegible]: You are averaging them together?

MR. MULOCK: I don't average them together, I am adding them together.

MR. [illegible]: You cannot add grey ponies.

MR. MULOCK: I am not adding grey ponies, I am [illegible] ponies.

MR. [illegible]: There are not 1.6 years.

MR. MULOCK: I have [illegible] 1.6.

MR. McRUER: It is an extraordinary way.

MR. KELLOCK: You can take the individual items and going across the page, "Singles Coarser than 40's" were higher for 37½ years. "Ply Under 40's" were higher for 31½. Cotton fabrics and grey goods they were higher for 15½ years. Bleached higher for 7½ years and Coloured higher for 31½ years. They were the "Same" the number of years I have set across the page and they were "Lower" the number of years I have set across the page, and if you want to get at a quick computation of the whole thing you simply add them together. If you do not like the adding, why treat them separately.

MR. McRUER: I do not know what value you would get out of adding them together.

MR. KELLOCK: It does show, I submit, that during the greater part of that time the rates were either the same or higher than the existing rates.

MR. McRUER: Take the "Coloured".

MR. KELLOCK: In the case of yarns they never were lower than the present rate.

MR. McRUER: Take the Coloured, for instance, they are 22½% now, they were higher from 1897 to 1900.

MR. KELLOCK: There was only two years where they were lower than they are now.

I go on to say in paragraph 6:

"The British preferential ad valorem cotton tariff rates set in 1928...."

[illegible]: It is an extraordinary [illegible].

Mr. [illegible]: You can see the individual lines and going across the page, "Angles coarser than 40" were [illegible] for 27[illegible] years. [illegible] higher for [illegible]. Cotton [illegible] and very [illegible] were [illegible] for 22[illegible] years. [illegible] 7½ years and [illegible] higher for 21½ years. They were like "[illegible]" the number of years I were not [illegible] the page and they were "lower" the number of years I have not [illegible] the page, and if you want to get at a quick computation of the whole thing you simply add them together. If you do not like the addition, [illegible] them separately.

Mr. [illegible]: I do not know when [illegible] you mean [illegible] out of [illegible] were together.

Mr. [illegible]: It does mean, I [illegible], that [illegible] during the quarter just of that time the rates were either the same or higher than the existing rates.

Q. [illegible]: [illegible] the "[illegible]".

Mr. [illegible]: In the case of [illegible] they never [illegible] lower than [illegible].

Q. [illegible] the [illegible], for [illegible], they are [illegible], they were higher from 1907 to 1[illegible].

Mr. [illegible]: There was only two years where [illegible] lower than [illegible].

I am [illegible] if [illegible].

"The [illegible] of [illegible] 1907 [illegible] tariff rates not in 1908...."

THE COMMISSIONER: On those cotton duties I take it now for granted there are no specific duties.

MR. KELLOCK: Not at present?

THE COMMISSIONER: No, all through the years.

MR. KELLOCK: Yes, there was. Your lordship sees from 1930 to 1936 there was specific duties, the second last and third last lines across the sheet. For instance, under the "Singles" coarser than 40's" the rate was 12½ plus 3¢.

THE COMMISSIONER: That plus means specific duty?

MR. KELLOCK: Yes. Just in those two periods.

MR. McRUER: In your brief, though, you say the duties are lower than they have been for the greater part of the period since 1897 but you reduce that now to the British Preferential.

THE COMMISSIONER: This is altogether dealing with the British Preferential.

MR. McRUER: But the Brief does not say so.

THE COMMISSIONER: He corrected it awhile ago but perhaps you did not hear. Mr. Kellock asked me awhile ago to write in "British Preferential".

MR. McRUER: Oh, that is a different story.

EXHIBIT 1344:- Table showing British Preferential Tariff, 1897 to 1936.

MR. McRUER: Was there any British Preference between 1897 and ---

MR. KELLOCK: Yes, I have got a Budget Speech here if you would like to hear it.

ROBT. BAYDIE
Chartered Stenographic
Reporter
TORONTO - CANADA

THE COMMISSIONER: In those words which I have
now for started there are no specific duties.

MR. KILLOCK: Not at present.

THE COMMISSIONER: No, all through the years.

MR. KILLOCK: Yes, there was. Your Lordship
sees from 1900 to 1936 there was a specific duties,
the second last and third last lines across the
sheet. For instance, under the "Religion" contract
then "a" the rate was 1½ plus 3%.

THE COMMISSIONER: That plus means specific duty

MR. KILLOCK: Yes. That is those are the two

THE COMMISSIONER: In your mind, anyway, you had the
having the lower than they have been on the Canadian
navy or the Airline crews. Just one you mean that now
to the British Preferential.

THE COMMISSIONER: This is altogether dealing
with the British Preferential.

MR. KILLOCK: But the brief does not say so.

THE COMMISSIONER: He corrected it awhile ago but
perhaps you did not hear. Mr. Killock asked me
awhile ago to write in "British Preferential".

MR. KILLOCK: Oh, that is a different story.

Continuing reading British Preferential
tariff, 1897 to 1930.

MR. KILLOCK: The lower duty British preferential
between 1897 and ——

MR. CHRISTIE: Mr. I have got a further copy here
if you would like it.

MR. McRUER: No, we will have a more up-to-date one to-day. Was there any difference in the rates on those items under the British Preference?

MR. KELLOCK: Yes, there was British Preference rates. It was initiated in 1897.

MR. McRUER: I know on some things. Were they on those?

MR. KELLOCK: Yes, these were British Preferential duties.

"The British preferential ad valorem cotton tariff rates set in 1928, as a result of investigations by the Tariff Board, were increased in 1930 and specific duties added."

MR. McRUER: That is not intended to be confusing I know.

THE COMMISSIONER: It is not the same tariff board.

7 MR. McRUER: No. The increases in 1930 were not the result of the investigation by the Tariff Board.

THE COMMISSIONER: No, quite the contrary.

MR. McRUER: It is the ones that were set in 1928.

THE COMMISSIONER: That is what I understand. They were set as a result of investigation by the Tariff Board.

MR. KELLOCK: That is what I say. I say "were increased in 1930."

"In September 1931 currency dumping duties were applied on imports from Great Britain. In April 1932 the excise tax was increased from 1% to 3%. In 1932 as agreed on at the Imperial Economic Conference specific

MR. MORGAN: No, we will have a more up-to-date day in-day. [illegible] in the years [illegible] those issues under the British Preference?

MR. KELLOCK: Yes, there was British Preference [illegible] it was initiated in 1897.

MR. MORGAN: I know on some things. Were they on [illegible] those?

MR. KELLOCK: Yes, those were British preferential duties.

"The British preferential ad valorem duties, which rates set in 1903, as a result of investigations by the Tariff Board, were increased in 1920 and specific duties added."

MR. MORGAN: That is not intended to be confusing I [illegible]

THE COMMISSIONER: It is not the same tariff board.

MR. MORGAN: No. The increases in 1920 were as the result of the investigation by the Tariff Board.

THE COMMISSIONER: No, quite the contrary.

MR. MORGAN: It is the ones that were set in 1903.

THE COMMISSIONER: That is not I understand. They were set as a result of investigation by the Tariff Board.

MR. MORGAN: That is what I say. I say "were increased [illegible]".

"In September 1921 emergency changing duties were applied on [illegible] British [illegible] in April 1922 the existing [illegible] Page 16 to 26. In 1927 it passed on to the

duties were reduced by 33 1/3%. There was also provided a special item admitting imports of cotton fabrics containing yarns of 100's count or finer free from Great Britain, and in addition the preferential rates on cotton pile fabrics were drastically reduced to 15%, thereby leaving the market for cotton velveteens and corduroys to English mills and making Canadian competition on cotton velours very difficult. In May 1933 the regulations on currency dumping duties made them non-operative against British goods. In April 1934 the excise tax on British goods was reduced from 3% to 1½% and was removed entirely in March 1935. In 1936 the wholly ad valorem preferential tariff rates recommended by the Tariff Board after an examination of the British and Canadian cotton industries were adopted and are now in effect. One-half of the present 36 cotton items are free of duty from Great Britian and a further 5 items are largely nominal and non-protective. The net preferential rates of the main items are as follows:"

"Single yarn coarser than 40's	- 12⅔%
Ply yarns, thread and twine,	15%
Grey cloth,	15%
Bleached cloth,	18%
Coloured cloth,	20¼%
Pile fabrics,	15%"

TORONTO CANADA

duties were reduced by 33 1/3%. There was also provided a special item admitting imports of cotton fabrics containing yarns of 100's count or finer free from Great Britain, and in addition the preferential rates on cotton piece goods were immediately reduced to 15%, leaving intact the market for cotton velvetens and corduroys to Canadian mills and making the competition on cotton velvets very difficult. In May 1926 new regulations on ordinary foreign duties came into non-operative against British goods. In April 1926 the excise tax on British goods was reduced from 6% to 1½% and was removed entirely in March 1928. In 1926 the Canadian ad valorem preferential tariff recommended by the Tariff Board after an examination of the British and foreign cotton industries were adopted and are now in effect. One-half of the present 36 cotton items are free of duty from Great Britain and 1 further 4 items are largely duty free and non-protective. The most preferential rates of 3 to 5% in items are as follows:

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

And they were all set under the Ottawa Agreements, and the spread between them and the intermediate also fixed at the same time and the general:

"The increases which have occurred in British cotton sales in Canada from 1930-1935 make it apparent that the higher 1935 tariff rates were not, in effect, a higher tariff protection. The amount of ad valorem duty which would be collected per pound of per yard would decrease with the drop in raw cotton prices, which were 33% higher in 1929-1930 than in 1934-1935."

MR. McRUER: Is not it a fact that the cotton prices were lowered when these increases were put into effect in September 1930 than they were in 1934 and 1935?

MR. KELLOCK: I say that Exhibit says they were not and I think you will find that is correct.

MR. McRUER: I think you will find you are wrong, that they were lower in September, 1930 than they were in 1934 and 1935.

MR. KELLOCK: Now, Exhibit 818 shows that in 1929---

MR. McRUER: September 1930.

MR. KELLOCK: Let me take 1929. January 2nd, 1929, was 20.10. In 1930 was 17.45 and the other period I mentioned ---

MR. McRUER: I am mentioning September 1930. That is the one I am talking about, when the new duties---

Mr. KELLOCK: Let me finish what I started. In 1934, 10.50 and in 1935 was 12.85. Now, taking the

and they were all set under the Ottawa agreements, and the spread between them and the intermediate also fixed at the same time and the general:

"The increases which have occurred in British cotton sales i. Canada from 1920-1922 make it necessary that the higher-level duties should not, in effect, a higher tariff protection. The amount of ad valorem duty which would be collected per pound of yarn would correspond with the drop in raw cotton prices, which were 55% higher in 1920-1922 than in 1924-1926."

Mr. [illegible]: Is not it a fact that the cotton prices were lowered when these increases were put into effect in September 1922 that they were in July and 1924?

Mr. MACLEAN: I say that I didn't care they were not and I think you will find that is correct.

Mr. [illegible]: I think you will find you are wrong, that they were lower in September, 1922 than they were in 1924 and 1925.

Mr. MACLEAN: Now, Mr. [illegible] says that in 1922--

Mr. MACLEAN: September 1922.

Mr. MACLEAN: Let me take 1922. January and 1922, was 23.10. In 1920 was 17.44 and the other [illegible] ---

Mr. [illegible]: I am mentioning September 1922. That is the time I am talking about, when the new duties---

Mr. [illegible]: Finish what I started. In April, 1924 and in July 1924. [illegible]

27th of September, 1930, you said.

MR. McRUER: September, 1930.

MR. KELLOCK: On the 27th of September it was 10.30 cents per pound. In 1934 on the same date it was 12.65, and 1935 it was 10.75.

MR. McRUER: So that it was lower, it was just practically the same. Give us September 17th, that is the nearest date.

MR. KELLOCK: September 17th it was 11 cents and on 1934, the samedate, it was 13.05. 1935 it was 10.80., That does not support your argument.

THE COMMISSIONER: We will adjourn now.

--

-- The Commission adjourned at 5 P.M. to resume on Friday, February 26th, 1937, at 10.30 A.M.

MR. MACLOCK: On the 27th of September it was 10.30 cents per pound. In 1984 on the same date it was 12.88, and 1985 it was 10.75.

MR. Hendry: So what it was lower, it was, was practically the same. Give us September 1987, that is the nearest date.

MR. MACLOCK: September 1987 it was 11 cents and on 1984, the nearest, it was 12.00. 1985 it was 10.80. That does not support your argument.

[illegible] I will adjourn now.

-- The Commission adjourned at 5 P.M. to resume on Friday, January 8th, 1987, at 10.30 A.M.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND NINETEENTH DAY

(February 26, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company,
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J. H. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

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HON. R. JU TICE A.T.L. TEGGE,

Chairman.

A.S. Whitley, Secretary.

E x t r a c e s:

J.W. Ashley, K.C. and H. Stewart, K.C.	Provincial Council.
A.L. Pelloch, K.C.	For Dominion Textile Industries.
Adam Geoffrion, K.C. and J.W. Williams.	For Dominion Textile Company.
J. Glass, K.C.	For Provincial Claims.
T.L. Tweedie, K.C.	For Canadian Malleable Iron and Canadian Pig Iron Limited.
A. Bonnar, K.C.	For Canadian Cotton.
Thos. Tremblay, K.C. and A. L. Lafleur.	For W.R. Grace Co. Ltd.
Francois Lajoie, K.C.	For Ashuapmushuan Cotton Co.

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Ottawa, Ontario,
Friday, Feb. 26, 1937

-- The Commission resumed at 10.30 A.M.

MR. KELLACK: My lord, I was dealing with paragraph 7 on page 4 of Section F, of my Factum just prior to adjournment. My friend was challenging the second sentence in that paragraph where I say the amount of ad valorem duty which would be collected per pound or per yard would decrease with the drop in raw cotton prices, which were 33% higher in 1929 -1930 than in 1934-1935.

Now, what is referred to there, my lord, is the crop year in each case which ends on the 31st of July, and going to Exhibit 600 where that situation is set out in detail the average of middling cotton spots prices in the season 1929-30 were 16.6 cents per pound. The following year, 1930-31 they dropped to 10.38¢. The next year 1931-32 down to 6.34¢. 1932-33 they started up and went to 7.37¢ . 1933-34, 11.09¢ and 1934-35, 12.44¢. So that the statement is perfectly accurate comparing the 1929-1930 season with the 1934-35 season, whatever the situation may have been on a particular day in September of 1930.

And I go on to say:

"The Canadian Manufacturing cost is a relatively fixed amount per pound or per yard higher than the manufacturing cost in Great Britain irrespective of the value of raw cotton in the goods. Therefore, when the value of cotton is low there is much less

-- The Commission resumes at 10.30 a.m.

Mr. LAMONT: My lord, I was reading with approval 7 on page 4 of section 7, of my Memorandum just prior to adjournment. My friend was challenging the accuracy contained in that paragraph where I say the amount of ad valorem duty which would be collected per pound or yard would decrease with the drop in raw cotton prices which were 58% higher in 1929 -1930 than in 1934-1935.

Now, what is referred to there, my lord, is the output in each case which ends on the 31st of July, and going to English 600 where that situation is set out in detail the average of adjusted cotton spot prices in season 1929-30 were 14.6 cents per pound. The following year, 1930-31 they dropped to 10.38¢. The next year 1931-32 down to 6.34¢. 1932-33 they started up and went to 7.37¢. 1933-34, 11.09¢ and 1934-35, 12.44¢. So that the statement is perfectly accurate comparing the 1929-1930 season with the 1934-35 season, whatever the situation may have been on a particular day in September of 1935.

And I go on to say:

"The Canadian manufacturing cost is a relatively fixed amount per pound or per yard higher than the American cotting cost in Great Britain irrespective of the level of the prices of raw cotton. Therefore the ratio of raw cotton to the total cost of production

real protection from ad valorem duties than when the value of cotton is high.

The net effect of the tariffs placed on cotton piece goods from Great Britain in recent years appears in the cents of duty per pound of fabric resulting at different periods."

In 1928 on grey cotton it was 7.20. On bleached cotton it was 12.03 and on coloured cotton, 16.78.

MR. McRUER: Might I ask what the foundation for this statement is.

MR. KELLOCK: If you look at my reference exhibit --

MR. McRUER: That is only copied from there.

THE COMMISSIONER: Are you referring to manufacturing costs?

MR. KELLOCK: No, my lord.

THE COMMISSIONER: You say there, "The Canadian manufacturing cost is a relatively fixed amount per pound or per yard higher than the manufacturing cost in Great Britain.....". Just what is the evidence as to the relative position of the two manufacturing costs?

MR. KELLOCK: Well, the evidence, my lord, as I have already drawn to your lordship's attention, is the difference in wages paid, and I come to that specific thing a little later on in this same section where there is a finding of the tariff Board.

THE COMMISSIONER: That is another paragraph?

MR. KELLOCK: Yes, my lord, I am coming to it. I have not just got the particular one in mind.

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real protection from advertising duties than when the value of wolens is high.

The net effect of the tariffs placed on cotton piece goods from Great Britain in recent years resulting at different periods.

In 1929 on grey cotton it was 7.60. On bleached cotton it was 10.60 and on mercerized cotton, 14.

Q. Now, on what I ask was the foundation for that statement is.

MR. [illegible]: It was based on [illegible]

MR. BENNETT: There is only copies from Lancs.

[illegible] are you referring to manufacturers [illegible]

MR. [illegible]: Yes, my lord.

MR. [illegible]: [illegible] The Canadian manufacturing cost is a relatively [illegible] or per yard higher than the manufacturing cost in Great Britain. Just what is the evidence in to the relative position of the two manufacturing concerns.

MR. KILLOCK: Well, the evidence, my lord, as I have already drawn to your lordship's attention, is the difference in wages paid, and I come to that specific thing a little later on in this same section where [illegible] is a [illegible] of the [illegible] Board.

MR. [illegible]: That is another [illegible]

MR. [illegible]: Yes, my lord, I am coming to it. I have [illegible] the [illegible] in [illegible].

MR. McRUER: But it was the foundation for this table. You see, that is just copied from a statement that was prepared by Mr. Hallam.

MR. KELLOCK: If you look at the Exhibit itself you will see the original sources.

MR. McRUER: This must be prices, at a certain day, or something like that.

MR. KELLOCK: They are not.

MR. McRUER: Are they actual importations?

MR. KELLOCK: Actual importations and actual duties.

MR. McRUER: Are they actual importations?

MR. KELLOCK: Actual importations and actual duties paid.

MR. McRUER: You say that?

MR. KELLOCK: Yes.

MR. McRUER: On what is it based?

MR. KELLOCK: Well, if you will look at it ?

MR. McRUER: It does not show. We tried to find out, to run it down and we could not. I do not see a thing on page 2 of Exhibit 600 about it. On page 3 the table is just copied again. As a matter of fact this paragraph is just lifted word for word from that brief.

MR. KELLOCK: Of course it is.

MR. McRUER: That is something that was prepared for the Textile Institute. It does not make it any stronger to transpose it to another place. You see, Mr. Hooper prepared tables that showed actual cases and

Mr. [illegible]: But it was the foundation for this [illegible] You see, that is just copied from a statement that was prepared by Dr. Gallien.

Mr. [illegible]: If you look at the exhibit itself you will see the original source.

Mr. [illegible]: Did [illegible] by [illegible], or a [illegible] or something like that.

Mr. [illegible]: They are not.

Mr. [illegible]: Are they actual importations

Mr. [illegible]: Actual importations and [illegible] duties.

Mr. [illegible]: Are they actual importations

Mr. [illegible]: Actual importations and actual duties paid.

Mr. [illegible]: You say that?

Mr. [illegible]: Yes.

Mr. [illegible]: On what is it based?

Mr. [illegible]: Well, if you will look at it?

Mr. [illegible]: It does not show. We tried to find out, to run it down and we could not. I do not see a thing on page 3 of exhibit 6 about it. On page 4 the table is just copied again. As a matter of fact this description is just lifted word for word from that, [illegible].

Mr. [illegible]: Of course it is.

Mr. [illegible]: That is something that was prepared for the [illegible] Institute. It does not [illegible] it [illegible] to [illegible] it by [illegible] plans.

Mr. [illegible]

we worked them out.

MR. KELLOCK: Actual cases of what?

MR. McRUER: Took an actual fabric and worked it out to see what the ad valorem to specific would be on those certain ---

MR. KELLOCK: From Great Britain?

MR. McRUER: We had some from Great Britain.

MR. KELLOCK: I think you had two. All the others were United States, supposed importations, where the competition does not come from. Answering myfriend's first question, taking the year 1933 which I have in my brief, figure 6.83, that would correspond to the 1934 fiscal year, within three months. Now, in Exhibit 600, reference 6, statement 6d, page 2, we show grey cloth 2,620,765 pounds imported.

THE COMMISSIONER: Page 2 reference 6?

MR. KELLOCK: Yes, it is part of Exhibit 600. That is how the sheet is described.

THE COMMISSIONER: When you have it here, "Exhibit 600, page 2," that is not quite sufficient.

MR. KELLOCK: No, reference 6, statement 6d, page 2. Now, that contains grey cloth, pounds imported 2,620,765 and duty collected $178,971, and duty in cents per pound 6.83, and that is thebasis for that table all the way through and each year in detail is given in this exhibit for grey cotton, bleached cotton, and coloured cotton.

MR. McRUER: That covers every type of grey goods.

[illegible]

[illegible]

MR. WOOD: Took an actual fabric and worked it out to see what one ounce of yolomen to specific would be on those certain ---

MR. ALLOCK: From Great Britain?

MR. WOOD: We had come from Great Britain.

MR. ALLOCK: I think you had two. All the others were United States, supposed importations, were the consideration does not come from. Assuming [illegible] first question, taking the year 1933 which I have in mind, figure 0.85, this would correspond to the 1934 fiscal year, within three months. Now, in exhibit [illegible] reference 6, statement 6A, page 2, we show grey cloth [illegible].

THE COMMISSIONER: Have a reference of [illegible]

MR. ALLOCK: Yes, it is part of exhibit 6B. That is how the about is described.

THE COMMISSIONER: When you have it here, "Exhibit 6B, Page 2," that is not quite sufficient.

MR. ALLOCK: No, [illegible] 5, [illegible] 1, [illegible] 0.0, 7.5 and duty collected 174,371, and duty in [illegible] 0.85, and that is [illegible] for that [illegible] year through and each year in detail is given in the [illegible] and column [illegible].

MR. KELLOCK: And those figures in turn come from Trade of Canada, and those are all cloths with which the Canadian mills had to compete, not one or two fabrics, as my friend takes in his brief.

SECRETARY WHITELEY: How are the 1928 figures derived?

MR. KELLOCK: Well, ---

MR. McRUER: Thismakes all the different types of cloth---

MR. KELLOCK: Please, I am trying to answer Mr. Whiteley, and I cannot do it. This is taken from the Trade of Canada for the fiscal year 1929, grey cloth, yards imported, 8,635,590, and turning the yards into pounds --

THE COMMISSIONER: The 8,000,000 is yards?

MR. KELLOCK: Yes, my lord, and turning that into pounds on the equivalent of the British Calendar year export it is 5.6 yards per pound.

MR. McRUER: How do you get the yards per pound?

MR. KELLOCK: That is the yards per pound with the British Export and right below on this same page I show the United Kingdom export to Canada from Trade and Navigation Accounts of the United Kingdom, and I show the lineal yards exported, the hundred weights exported, the pounds exported, which is the 5.64 figure and then--

THE COMMISSIONER: It is lineal yards you are considering now?

MR. KELLOCK: Yes.

MR. KNIGHT: And those figures in turn come from Trade of Canada, and those are all cloths with which Canadian mills had to compete, not one or two fabrics, as my friend takes in his brief.

SECRETARY WILSON: How are the 1929 figures derived?

MR. KNIGHT: Well, ---

MR. BENNETT: Taking all the dirts and types of cloth---

MR. KNIGHT: Please, I am trying to answer Mr. Whitley, and I cannot do it. This is taken from the Trade of Canada for the fiscal year 1929, grey cloth, yards imported, 6,400,000, and summing the yards into pounds --

MR. BENNETT: Yes, my lord, and turning that into pounds on the equivalent of the British Calendar year export it is 5.6 yards per pound.

MR. BENNETT: Yes do you get the yards per pound?

MR. KNIGHT: That is the yards per pound with the British Export and right below on this same page I and the United Kingdom export to Canada from Trade and Navigation Accounts of the United Kingdom, and I show the linear yards exported, the hundred weights exported, the average ex-duty, which is the 5.6 figure you [illegible]

[illegible]

MR. BENNETT: Yes.

THE COMMISSIONER: It has to be divided by 5.64 to get the pounds.

MR. KELLOCK: Turning that into pounds it is 1,534,679. The duty collected is $110,471, and the duty in cents per pound 7.20 which I show in my factum.

In 1931 then on grey cotton it was 8.62 cents, on bleached cotton it was 12.92 cents and on coloured cotton it was 15.23. In 1933 on grey cotton it was 6.83; on bleached cotton it was 10.46 and on coloured cotton it was 13.04. And I ask your lordship to substitute for the 1936 figures there, which were estimated, the figures which I now have for ten months from April, 1936 to January 1937. These are actual figures and for grey cotton the figure is 5.06¢. For bleached cotton, 8.52¢ and for coloured cotton, 10.39.

"This is a statement of the duties collected in terms of the cents per pound received which is the only accurate measure of the actual protective effect of the duty for Canadian industry as against the United Kingdom Cotton Industry, since the difference in costs of production between the United Kingdom and Canada which the Canadian tariffs are designed to equalize is a relatively fixed amount per pound or per yard of production and not in terms of a sales value which includes and entirely inconstant value of raw material. (See Exhibit 932 p.65 for fluctuations of raw cotton prices).

The Gross Income: It has to be divided by 5.04 to get the pounds.

Mr. Mulock: Turning that into pounds it is 1,334,672. The duty collected is $110,471, and the duty in cents per pound 7.80 which I have in my file.

In 1931 then on grey cotton it was 8.02 cents, on bleached cotton it was 10.52 cents and on coloured cotton it was 10.55. In 1932 on grey cotton it was 9.03; on bleached cotton it was 10.65 and on coloured cotton it was 12.04. And I ask your lordship to consider for the 1935 figures these, which were submitted, the figures which I now have for ten months from April to January 1937. These are actual figures and for grey cotton the figure is 8.49; for bleached cotton 8.52 and for coloured cotton, 10.39.

"This is a statement of the duties collected in terms of the cents per pound received which is the only accurate measure of the actual protective effect of the duty for Canadian industry as against the United Kingdom cotton industry, since the difference in costs of production between the United Kingdom and Canada which the Canadian tariffs are designed to equalize is a relatively fixed amount per pound or per yard of production and not in terms of a fixed percentage value (duties and entered [illegible] value of [illegible]).

Pass for discussion of raw cotton products.

Exhibits 857, 858, 860 and 861 are the only price and duty series filed by Mr. Hooper on English cotton goods extending from 1930 to 1936 and they all show that the protection in cents per pound is less in 1936 than in 1930, although the ad valorem duty rate is either the same or higher in 1936 than in 1930."

The average duties collected on dutiable cotton yarns from Great Britain have been -

1929 - 9.7%

1932 - 10.5%

1934 - 10.9%

1935 - 12.1%"

In connection with duty....."

THE COMMISSIONER: Pardon me, are you talking per pound or ad valorem?

MR. KELLOCK: That is per cent, ad valorem, my lord.

MR. McRUER: Now, this includes thread for yarn manufacturers which comes in at 7½----

MR. KELLOCK: It does not include thread for yarn manufacturers; it includes yarn for yarn manufacturers.

MR. McRUER: It is raw material and it comes in at 7½ and is not made in Canada.

MR. KELLOCK: I am instructed that both the yarn and thread are made in Canada.

MR. HOOPER: The Department has ruled that it is not.

MR. McRUER: Well, the Department does not agree

Publication 287, 288, 289 and 291 are the only price and duty series filed by Mr. Hooper on English cotton goods extending from 1890 to 1895 and they all show that the protection in cents per pound is less in 1894 than in 1890, although the ad valorem duty rate is either the same or higher in 1894 than in 1890."

The average duties collected on dutiable cotton yarns from Great Britain have been -

1890 - 9.7%

1891 - 10.3%

1894 - 10.6%

1895 - 14.1%"

In connection with duty....."

Mr. COOPER: Pardon me, are you talking per pound or ad valorem?

Mr. FIELDING: That is per cent, ad valorem, my lord.

Mr. MOORE: Now, this includes thread for yarn manufacturers which comes in at 7½----

Mr. FIELDING: It does not include thread for yarn manufacturers; it includes yarn for yarn manufacturers.

Mr. MOORE: It is raw material and it comes in at 7½ and it may be in demand.

Mr. FIELDING: I am informed that both the yarn and thread are made in Canada.

Mr. MOORE: The department has ruled that it is duty.

Mr. BOURASSA: Well, the statement here at first

with you.

THE COMMISSIONER: In connection with Japanese importations there was talk about the cheap lines which come in. Now, in connection with the British is there the same necessity for duties on cheap as on dear lines? Is there any tendency of cheap goods to come in here from Great Britain?

MR. KELLOCK: Your Lordship means the Japanese cheap taffeta?

THE COMMISSIONER: No, in the case of the Japanese there was that discussion. Is there any such tendency in connection with the British?

MR. KELLOCK: That Mr. Berry says, my lord, is that the Treaty with Great Britain has been in effect for a very considerable time and of course the British Industry has been going for a very much longer time, and in connection with the Japanese imports, which made itself felt at the beginning, what we got first here was the cheaper things and there is no such tendency in connection with imports from Great Britain. The English Industry makes all types of cotton goods which compete with those which are made in Canada here and they come here.

"In connection with duty on cotton yarns, it should be borne in mind that from 1930-1935 there has been increasing provision for the free entry of various types of cotton yarns from Great Britain so that the ad valorem duties quoted above on dutiable cotton yarns would be the duties collected

only on those yarns for which no provision had been made for free entry.

As stated, new and lower duties on importations of cotton goods from Great Britain became effective on May 2, 1936, and the effect of this reduction is shown in Exhibit 600, Part II. In the 4 months previous to May exports of cotton piece goods from Great Britain to Canada decreased 2% from the corresponding period in 1935. In the 4 months, May to August, 1936, exports of cotton piece goods from Great Britain to Canada increased 36% over the corresponding period in 1935."

With regard to "Cotton drawbacks:"

"All cottons which are imported from any country to be used in the manufacture of articles for export from Canada are subject to a drawback of 99% of the duty paid upon exportation."

That means, of course, 99% of the duty which had been paid on importation being remitted on exportation.

"This results in a substantial 'free trade' market in Canada for industrial cloths and it is estimated...."

THE COMMISSIONER: Market in Canada, yes, for cloths to be used by manufacturers.

MR. KELLOCK: And are exported.

THE COMMISSIONER: They do not go to the Canadian Consumer at all.

MR. KELLOCK: No. There is some, I will deal with

only on those items for which no provision had been made by free entry.

As stated, new and lower duties on importation of cotton goods from Great Britain became effective on May 5, 1926, and the effect of this reduction is shown in Exhibit 000, Part II. In the 4 months previous to May exports of cotton piece goods from Great Britain to Canada decreased 6% from the corresponding period in 1925. In the 4 months, to August, 1926, exports of cotton piece goods from Great Britain to Canada increased 0% over the corresponding period in 1925."

With regard to "cotton drawbacks:"

"All cottons which are imported from any country to be used in the manufacture of articles for export from Canada are subject to a drawback of 99% of the duty paid upon importation."

That means, of course, 99% of the duty which had been paid on importation being remitted on exportation.

"This results in a substantial 'free trade' market in Canada for industrial cloths and it is estimated...."

[illegible] to be used by manufacturers.

[illegible]

[illegible]

that.

THE COMMISSIONER: Are you finding fault with that?

MR. KELLOCK: No, I am not finding fault with it, just a fact, my lord.

"This results in a substantial 'free trade' market in Canada for industrial cloths and it is estimated that 1901,000 pounds of imported cottons were exported from Canada in 1934 in the form of manufactured articles."

And, of course, if domestic manufacturers want to get any part of that business they have to meet the price of the imported cloth apart altogether from the duty.

MR. McRUER: Yes, but the exporter has to meet the price in the export market.

MR. KELLOCK: If the domestic exporter wants to sell his products, in view of the fact that there is only net 1% duty on similar cloth coming into Canada for that purpose, net 1% of the duty, then he has to meet that price if he wants to get any part of that business.

THE COMMISSIONER: Well, is there any controversy over it?

MR. KELLOCK: Of course the industry would like to have some assistance to get that business.

MR. McRUER: How is the secondary manufacturer going to compete?

THE COMMISSIONER: Give me a concrete case of who is who. Who in Canada would furnish this industrial cloth - to whom?

that.

THE COURT REPORTER: Are you finding fault with the

Mr. Ballard: No, I am not finding fault with it, just a fact, my lord.

This remark in a commercial view here--where it speaks for luxurious for luxurious cloths and it is pertinent and lint, for goods of inferior texture may exported from Canada is 100% in the form of manufactures.

And, of course, if domestic manufacturers want to get any part of that business they have to meet the price of the imported cloth apart altogether from the duty.

Mr. Mulock: Yes, but the exporter has to meet the price in the export market.

Mr. Ballard: If the domestic exporter wants to sell his products, in view of the fact that there is only net 15% duty on similar cloth coming into Canada for the purpose, net 15% of the duty, then he has to meet that price if he wants to get any part of that business.

The Chairman: Well, is there any controversy over it?

Mr. Mulock: Of course the industry would like to have some assistance to get that business.

Mr. Mulock: How is the secondary manufacturer going to compete?

The Court Reporter: Give me a concrete case of who is who. Who in Canada would furnish this industrial alcohol - to whom?

MR. KELLOCK: My lord, reference 8, statement 8-C.

THE COMMISSIONER: Of the same Exhibit 600 ?

MR. KELLOCK: Yes, my lord. I will take a couple of examples from there. This is a table of Canadian exports of cotton and products containing cottons in the calendar year 1934. Now, we take milled products, flour, &c. The Canadian exports were 2,878,741 cwts. and 5,097,068 brls. Now, the chief ---

THE COMMISSIONER: You are talking now of Canadian export of goods into which this sort of industrial cloth is entering?

MR. KELLOCK: Yes, my lord. Your lordship sees in the next column the heading is, "Chief source of cotton content." That is as between imported and domestic, and the first item I am dealing with the chief source of the cotton was imported.

THE COMMISSIONER: Does that mean imported from Great Britain?

MR. KELLOCK: No, that would principally be the United States. Then the estimated weight of the cotton in those exports is 1,855,000 pounds, and similarly in the case of sugar exported in the same year there was 106,873 cwts.

THE COMMISSIONER: You do not show any cotton in connection with the sugar?

MR. KELLOCK: Yes, that 106,873 cwts. , that includes the sugar and the cotton and the cotton content was

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Q. Million. Mr. Lord, reference 0, element 3-0.

THE COMMISSIONER: Of the same Exhibit 800?

MR. MILLOCK: Yes, my Lord. I will take a sample of examples from there. This is a table of Canadian exports of cotton and products containing cotton in the calendar year 1924. Now, we take milled products, first, Mr. The Canadian exports were 4,679,741 cwts. and 3,037,088 bales. Now, the chief ---

THE COMMISSIONER: You are talking now of Canadian export of goods into which this sort of industrial cotton is entering.

MR. MILLOCK: Yes, my Lord. Your Lordship sees in the next column the heading is, "Chief source of cotton content." Next is as between imported and domestic, and the first item I am dealing with the chief source of the cotton was imported.

THE COMMISSIONER: Does that mean Canadian-grown cotton?

MR. MILLOCK: No, that would principally be the United States. Then the estimated weight of the cotton in these exports is 1,000,300 pounds, and similarly in the case of sugar exported in the same year there was 106,875 cwts.

THE COMMISSIONER: You do not know my cotton is comparable with the sugar?

MR. COLLINS: Yes, they are [illegible]. Then [illegible] the sugar and the cotton content was

20,000 pounds. Now, that cotton stuff then was supplied by the foreign producer.

THE COMMISSIONER: All the rest was domestic except binders.

MR. KELLOCK: Yes, binders at the bottom.

MR. McRUER: About 1,900,000 imported out of a total of 10,102,000.

MR. KELLOCK: So far as we are able to find out this statement covers the situation.

MR. McRUER: About 80% is domestic.

MR. KELLOCK: That may be so but the volume of cotton is substantial. As I say in my brief: "It is estimated that 1,901,000 pounds of imported cotton were exported from Canada in 1934 in the form of manufactured articles.

MR. McRUER: What effect would it have on the flour millers in the foreign markets?

MR. KELLOCK: Then I go on to say:

"All of the cotton yarn or cloth required for the manufacture of these export articles can, in effect, be imported into Canada practically free of duty from any country, but owing to the proximity of the United States and the low prices at which the cloths can be produced in Southern mills, the bulk of them are imported from the United States and any Canadian or other manufacturer desiring any portion of this business has been forced to sell at prices prevailing in the Southern mills."

50,000 pounds. Now, some million pounds have been exported by the foreign producer.

Mr. Chairman: All the yarn was domestic cotton, wasn't it?

Mr. MILLOCK: Yes, higher at the bottom.

Mr. BOWMAN: About 1,500,000 imported out of a total of 10,100,000.

Mr. MILLOCK: So far as we are able to find out this statement covers the situation.

Mr. BOWMAN: About 60% is domestic.

Mr. MILLOCK: That may be so but the volume of cotton is substantial. As I say in my brief: "It is estimated that 1,001,000 pounds of imported cotton are exported from Canada in less in the form of yarn and cloth."

Mr. BOWMAN: What effect would it have on the finishers in the foreign market?

Mr. MILLOCK: Then I go on to say:

"All of the cotton yarn or cloth produced in the manufacture of these export articles can, in effect, be imported into Canada practically free of duty from any country, but owing to the proximity of the United States and the low prices at which the cloths can be produced in southern mills, much of them are imported from the United States and not Canadian or other manufacturer dealing in cotton of Canadian or Irish manufacture are been driven out of Canadian markets.

THE COMMISSIONER: He may not have found it worth while, if he sells 80% of it.

MR. KELLOCK: Well, that is, of course, on the other types of products that are set forth on that sheet.

THE COMMISSIONER: What other products?

MR. KELLOCK: Well, rubber shoes. They are all detailed.

THE COMMISSIONER: I know, but it is all industrial cotton going into them.

MR. KELLOCK: Yes.

MR. McRUER: Cotton clothing, for instance, 2,800,000 yards.

MR. KELLOCK: I do not think I am dealing with cotton clothing. I am dealing with industrial.

THE COMMISSIONER: Yes, this sheet deals with cotton clothing. It shows $580,000 and estimated weight 325,000 pounds.

MR. KELLOCK: What I meant, my lord, that my figure of 1,901,000 pounds, in paragraph 11, which is industrial cloth, that is more the type of thing in the first two articles which are containers for flour and sugar and that sort of thing.

MR. McRUER: What would the cotton fabric be that are mentioned here, 2,800,000 pounds of domestic cotton goes into them that are exported. Would that be tire fabrics, Mr. Berry?

MR. BERRY: Tire fabric to Australia.

MR. KELLOCK: My lord, in the next two paragraphs

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THE COMMISSIONER: He may not have found it worth while, if he sells 80% of it.

MR. WHILDEN: Well, that is, of course, on the other hypothesis that we are not there on that hypothesis.

THE COMMISSIONER: Well, rubber shoes. They are all detailed.

THE COMMISSIONER: I know, but it is all industrial cotton going into them.

MR. WHILDEN: Yes.

MR. [illegible] Cotton clothing, for clothing, shoes, [illegible].

MR. WHILDEN: I do not think I am dealing with cotton clothing. I am dealing with industrial.

THE COMMISSIONER: Yes, but most people call it cotton clothing. It means $850,000 and estimated weight 2[illegible],000 pounds.

MR. WHILDEN: What I meant, my lord, that my figure of 1,901,000 pounds, in paragraph 11, which is industrial cloth, that is more the type of thing in the first two articles which are containers for flour and sugar and that sort of thing.

MR. WHILDEN: What would the cotton fabric be that are mentioned here, 2,800,000 pounds of domestic cotton goes into them that are exported. Would that be [illegible], W. [illegible]?

MR. [illegible]: These goods go [illegible].

MR. [illegible]: No [illegible], is the [illegible]

12 and 13, I am dealing with the United States principally, which is on the intermediate tariff:

"With regard to importations of cotton goods from the other chief source of imports into Canada namely, the United States, there were of course, substantial increases in duties introduced in 1930 and as a result the United States exports of cotton piece goods to Canada have fallen from 58 million square yards in 1930 to 18 million square yards in 1935 (Exhibit 600, statement 5d). As pointed out above, the substantial proportion of fabrics now being imported from the United States would be used in the manufacture of articles to be exported from Canada. The decrease in imports from the United States which has continued from 1930 to 1935 was accelerated in 1932 by the duty provisions made at the Imperial Economic Conference, the in intention of which was to divert as large a proportion as possible of Canadian import business to Great Britain. That this was effected is shown by the fact that in the same period in which the United States exports to Canada decreased from 27 to 12 million square yards, the British exports increased from 27 to 60 million square yards.

On January 1, 1936, the intermediate tariff rates became effective on importations of cotton goods from the United States. This decrease of duties applicable has had the effect of

13 and 14, I am dealing with the United States policy, which is on the intermediate tariff:

"With regard to importations of cotton goods from the other chief source of imports into Canada namely, the United States, a marked decrease, substantial increase in duties introduced in 1930 and as a result the United States exports of cotton piece goods to Canada have fallen from 38 million square yards in 1930 to 12 million square yards in 1933 (Exhibit 610, statement 34). As pointed out above, the substantial proportion of textiles now being imported from the United States could be used in the manufacture of articles to be exported from Canada. The decrease in imports from the United States which has continued from 1930 to 1933 was accelerated in 1933 by the duty provisions made at the Imperial Economic Conference in the interest of which was to divert as large a proportion as possible of Canadian import business to Great Britain. That aim was effected in Canada by the fact that in the same period in which the United States exports to Canada decreased from 27 to 12 million square yards, the United Kingdom increased from 1 to 3 million square yards.

In January 1, 1935, the PRESIDENT SAID:

"Mr. Bennett:-MEMBERS on importations of cotton goods from the United States. Will Mr. Bennett be kindly supplied with the evidence of

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increasing Canadian importations of cotton yarns in eleven months of 1936 by 2% from the United States and in an increase during the same period of 34% of cotton piece goods, both over the corresponding period of 1935."

MR. McRUER: Have you got the figures?

MR. KELLOCK: Yes, they are in my brief, immediately following Section E, and I have referred to them before and I am going to refer to them again.

"Whether or not....."

And I come back to the Preferential rates, my lord, in this paragraph. "

"Whether or not the present preferential cotton tariff rates, --- "

And I am not quite up to date this morning, my lord.

THE COMMISSIONER: You mean the recent?

MR. KELLOCK: Yes, my lord, or the late.

"Whether or not the present preferential cotton tariff rates will provide adequate protection to the Canadian industry will to a certain extent only be clear by their effect on the Canadian industry. It can, however, be said that any tariff rate must necessarily apply to a large group of products since a system of tariffs designed to meet the requirements of each particular fabric or yarn would be impossible to administer. It, therefore, follows that under any

interesting Canadian importations of cotton yarns in eleven months of 1882 by 33 from the United States and in an increase during the same period of 2%% of cotton piece goods, both over the corresponding period of 1881."

Mr. McCARTHY: Have you got the figures?

Mr. ELLIOTT: Yes, they are in my brief, immediately following section 6, and I have referred to them before and I am going to refer to them again.

"Thus we have,

and I come back to the preferential rates, my lord, in this judgment,

"Number of all the [illegible] conditional duties [illegible] --

and I am not quite up to date this morning, my lord.

THE COMMISSIONER: You mean the moment?

Mr. ELLIOTT: Yes, my lord, at the time.

"Whether or not the present preferential duties [illegible] to the Canadian industry will to a certain extent only be given by their effect on the Canadian industry. It can, however, be said that any tariff rate must necessarily apply to a large group of producers since a system of tariffs designed to meet the requirements of each manufacturer [illegible] minister. It, therefore, follows that under any

tariff rate there will be items which are under protected and some items which may be over protected, but it is the result of the tariff rate on the whole group of items to which it is designed to apply which must be considered."

And I submit that is an important consideration, my lord, because if you get down to an individual fabric it may not represent the effectof the duty on all fabrics or articles included in the items as a wole, but it may fall on one side of the line or the other because the duty rate applies to a number of items and they may be affected differently by the same duty item and that is the weakness in directing too much attention to a particular fabric rather than the thing as a whole.

(Page 16980 follows)

tariff rate there will be items which are under protected and some items which may be over protected, but it is the result of the tariff rate on the whole group of items to which it is designed to apply which must be considered.

And I submit that is an important consideration, my lord, because if you get down to an individual table it may not represent the effect of the duty on all the articles included in the items as a whole, but it may fall on one side of the line or the other because the duty rate applies to a number of items and they may be affected differently by the same duty item and that is the weakness in directing too much attention to a particular table rather than the thing as a whole.

(Page 10006 Follows)

At the present time all that can be said for the preferential tariff rates now in effect -- or lately in effect -- is that they are the result of an examination made by the Tariff Board of the British and Canadian cotton industries on the basis set out in article 11 of the Canada-United Kingdom Trade Agreement 1932, which provides that, "The tariff shall be based on the principle that protective duties shall not exceed such a level as will give United Kingdom producers full opportunity of reasonable competition on the basis of the relative cost of economical and efficient production". Whether or not the present rates which, as is shown in evidence, carry less protective effect now than at any time since at least 1929 will adequately fulfil the basis on which they have been set, is a matter on which it is too early to form a mature judgment.

The Tariff Board's report was made in May, immediately prior to May 2nd, 1936, and was implemented in the budget of 1936. The report was made on the basis of Article XI, which of course is on the basis of the relative cost of production in the two countries and that there shall be competition. To-day we have the altered situation that, apart altogether from what the relative costs of production in the two countries may be, there have been further reductions; and my friend comes before your lordship and argues to your lordship that these duties are too high, and my submission is that my friend has no evidence whatever for that sub-

At the present time all that can be said for the preferential tariff rates now in effect -- or latelyin effect -- is that they are the result of an examination made by the Tariff Board of the British and Canadian cotton industries on the basis set out in article II of the Canada-United Kingdom Trade Agreement Act, which provides that, "The tariff shall be based on the principle that protective duties shall not exceed such a level as will give United Kingdom producers full opportunity of reasonable competition on the basis of the relative cost of economical and efficient production". Whether or not the present rates which are shown in evidence, carry less protective effect now than at any time since at least 1922 will adequately fulfil the basis on which they have been set, is a matter on which it is too early to form a certain judgment.

The Tariff Board's report was made in May, immediately prior to May 2nd, 1926, and was implemented in the budget of 1926. The report was made on the basis of Article VI, which of course is on the basis of the relative cost of production in the two countries and that there shall be competition. To-day we have the altered situation that, apart altogether from the relative costs of production in the two countries, there have been further reductions; and my friend comes before your lordship and appeals to your lordship that these duties are too high, and so substantially

mission, that the authoratitive body which has dealt with those rates has done so on such a basis that surely it cannot be argued that it should be on a more advantageous basis to the British exporters.

THE COMMISSIONER: On the basis as set out in the agreement.

Mr. KELLOCK: Well, the basis set out in the agreement was on the basis of relative costs of production and reasonable competition. If you are going to go lower than that you are going to give an advantage to the British exporter, and in so far as yesterday's budget goes lower, the British exporter has been given an additional advantage.

THE COMMISSIONER: Yes. I remember it was pointed out to me yesterday how the agreement also says that the Canadian government holds itself free to go lower if it wants to, so it has apparently used that freedom to some extent. I do not know. All I have seen is what is in the newspapers. I do not know what happened.

MR. McRUER: Of course the experience of the industry in the past under lower schedules must be taken into consideration, in the absence of definite costs of production, -- the experience of how they have done it.

MR. KELLOCK: My submission rather is this, that the Canadian duty rates of 1936 --

THE COMMISSIONER: Are you talking of the British rates?

MR. KELLOCK: The British preferential

rates fixed in 1936 were fixed on the basis of the relative cost of production in the two countries. If you go lower than that --

THE COMMISSIONER: Relative costs of production and reasonable competition.

MR. KELLOCK: And reasonable competition. If you go lower than that, if you lower the duties on imports from Great Britain of cotton goods, you --

THE COMMISSIONER: Yes, but these two factors may be fluctuating factors, you see. The relative costs of production may change from year to year, and the factor of reasonable competition likewise may fluctuate.

MR. KELLOCK: Yes. All I am saying is that my friend comes before your lordship and asks for lower duties.

THE COMMISSIONER: Well, I do not suppose he would say it should be other than on that basis.

MR. KELLOCK: I don't know. He just says, lower duties.

THE COMMISSIONER: What he did say was that reasonable competition does require lower duties. That is what he has said all through. He has said that the tariff should be based on reasonable competition, and he had this to say, speaking not only of the British tariff rate but the whole tariff, that it does not afford in many instances reasonable competition.

MR. KELLOCK: At the moment I am dealing only with the preferential tariff rates.

rates fixed in 1926 were fixed on the basis of the relative cost of production in the two countries. If you go lower than that --

THE CHAIRMAN: Relative costs of production and reasonable competition.

MR. MACLEAN: And reasonable competition. If you go lower than that, if you lower the duties on imports from Great Britain of cotton goods, you --

THE CHAIRMAN: Yes, but these two factors may be fluctuating factors, you see. The relative costs of production may change from year to year, and the factor of reasonable competition likewise may fluctuate.

MR. BLACK: Yes. All I am saying is that my friend comes before your lordship and asks for some duties.

THE CHAIRMAN: Well, I do not suppose he would say it should be other than on that basis.

MR. BLACK: I don't know. He just says, lower rates.

MR. CHAIRMAN: What he did say was that reasonable competition does require lower duties. He is not be now said all things. He has said that the tariff should be based on reasonable competition, and he has said so many, according not only of the British tariff rate but the whole tariff, that it does not afford in many instances reasonable competition.

MR. BLACK: At the moment I am dealing only with the preferential tariff rates.

THE COMMISSIONER: I know.

MR. KELLOCK: And I submit that when my friend asks for the lowering of these duty rates he does so without any evidence.

MR. McRuer: Oh.

THE COMMISSIONER: Well, we had a great mass of evidence of what is going on.

MR. KELLOCK: Yes my lord. But let me put it this way, that the last evidence aside from what may be before your lordship -- and I will deal with that separately -- and the best evidence which is before your lordship is the finding of the Tariff Board in 1936, upon the basis of which --

THE COMMISSIONER: Well, did the Tariff Board go on and say that the rates should be so and so and so and so, in any case?

MR. KELLOCK: Yes, they recommended certain rates and they were implemented in the budget, and that was on the basis of relative costs of production and reasonable competition. So far as I know, my lord, there is no evidence before your lordship to show that, while the relative costs of production may have varied or the basis of reasonable competition may have varied, it in fact has varied. The only thing that is before your lordship is the profits of the companies concerned, and I have dealt with those, and we have the additional fact that the cotton duties which were set on the Tariff Board's recommendation in 1936 have again been reduced, yesterday, so that my

THE COMMISSIONER: I know.

MR. FLOOD: And I submit that when my friend sees fit for the lowering of these duty rates he does so without any evidence.

MR. MULVEY: Oh.

THE COMMISSIONER: Well, we had a great deal of evidence of what is going on.

MR. FLOOD: Yes my lord. But let me put it this way, that the last evidence made from what my be before your lordship -- and I will deal with that separately -- and the best evidence which is before your lordship in the finding of the tariff board in 1926, upon the basis of which --

THE COMMISSIONER: Well, did the Tariff Board go on and say that the rates should be so and so and so and so, in any case?

MR. FLOOD: Yes, they recommended certain rates and they were implemented in the budget, and that was on the basis of relative costs of production and reasonable competition. So far as I know, my lord, there is no evidence before your lordship to show that, while the relative costs of production may have varied or the basis of reasonable competition may have varied, it is just the reverse. We only claim that in being particularly fair to the people of the Dominion as a whole, and I have dealt with those, and we have the additional fact that the cotton duties which were set on the Tariff Board's recommendation in 1926 have really been reduced yesterday, so that my

submission is that my friend has no evidence upon which he can base his submission that these duties are too high or should be lowered.

THE COMMISSIONER: By the way, we have to amend a great many things here, or make addenda to them, setting out the new tariff rates.

MR. McRUER: Probably we should file now the new trade agreement.

THE COMMISSIONER: That also, I guess.

MR. McRUER: And this clause my friend mentions is now eliminated from the agreement.

THE COMMISSIONER: Does this agreement repeal the last one?

MR. KELLOCK: Yes, it does. It does not affect the argument I addressed to your lordship. That is, the basis of the duties in 1926 was that basis.

THE COMMISSIONER: Up to yesterday, apparently.

MR. KELLOCK: And yesterday reduced it.

THE COMMISSIONER: What is the new basis Mr. McRuer?

MR. McRUER: There is no new basis. They just agree that certain duties as set out in the schedule will prevail. They reduce the number of items on which they agree to preserve a preference from some 200 odd or more to 91.

THE COMMISSIONER: You mean that is the difference between the 200 and the 91, in the intermediate tariff?

MR. McRuer: Your lordship will remember that

submission is that my friend has no evidence upon which he can base his submission that these duties are too high or should be lowered.

THE COMMISSIONER: By the way, we have to consider great many things here, or make allowance to them, with out the new tariff rates.

MR. MEDLAND: Probably we should file now the re-

[illegible] agreement.

THE COMMISSIONER: Well also, I guess.

MR. MEDLAND: And this closes my final contions now eliminated from the agreement.

THE COMMISSIONER: Does that agreement repeal the last one?

MR. MEDLAND: Yes, it does. It does not affect the argument I addressed to your lordship. That is, the basis of the duties in 1926 was that basis.

THE COMMISSIONER: Up to yesterday, apparently.

MR. MEDLAND: And yesterday reduced it.

THE COMMISSIONER: What is the new basis it

[illegible]?

MR. MEDLAND: There is no new basis. They just [illegible] that certain duties are set out in the schedule which [illegible]. They reduce the number of items on which they [illegible] to preserve a preference from some 500 odd or more to 12.

THE COMMISSIONER: You mean that is the difference between the 500 and the 12, in the intermediate tariff?

MR. MEDLAND: Yes. I don't know, will remember that

yesterday my friend was emphasizing the fact that under the intermediate tariff certain rates prevailed at the time of the agreement. Then certain rates were fixed under the British preferential, and they agree that this differential should be maintained between intermediate and British preference.

THE COMMISSIONER: On these 200?

MR. McRUER: On these 200 and some odd items, that has been reduced under this agreement to about 91 items, on substantial items under which there should be no conflict between the two countries.

MR. KELLOCK: Yes. To what extent do those include textile items, though?

MR. McRUER: I do not know whether the textile items are still in the 91 or are out. I have not had the chance to analyze that. I think probably we had better put in now a copy of the agreement.

THE COMMISSIONER: Yes. Well then, it should be looked into carefully and spoken to later.

MR. KELLOCK: Would your lordship prefer to have that or would your lordship prefer to have a copy of the budget speech, which includes that and all the changes?

MR. McRUER: I will put that in too. I have that.

EXHIBIT No. 1345: Copy of Canada-United Kingdom Trade Agreement, 1938.

ROBT. BRYDIE
TORONTO - CANADA

yesterday my friend was emphasizing the fact that under the intermediate tariff men in rates are willed at the time of the agreement. Then certain rates fixed under the British preferential, and they agree that this differential should be maintained between intermediate and British preference.

THE COURT: I ...: On these ...?

MR. MERRIN: On these 500 and some odd items, that has been reduced under this agreement to about 21 items, on substantial item under which there can be no conflict between the two countries.

MR. MACLEOD: Yes. To what extent do these intermediate textile items, though?

MR. MERRIN: I do not know whether the textile items are still in the 21 or are out. I have not had the chance to analyze that. I think probably we had better put in now a copy of the agreement.

THE COURT: Yes. Well, it should be looked into carefully and gone to later.

MR. MACLEOD: Would your Lordship prefer to have that or would your Lordship prefer to have a copy of the budget speech, which includes that and all the change?

MR. MERRIN: I will put that in too. I have that.

EXHIBIT NO. 1338: Copy of Canada-Britain Intermediate Agreement, 1932.

EXHIBIT No.1346: Budget speech, February 25, 1937.

MR. McRUER: In regard to that item of the reduction of these margins, my lord, it appears on page 53 of the budget speech:

"The reduction in the number of tariff items on which margins of preference are bound against decrease, from 215 in the 1932 agreement to 91 in Schedule V of the present agreement, is further evidence of the effort that has been made to reconcile the principle of preferences with the necessity of removing barriers that stood in the way of international trade. The new agreement achieves a radical and far-reaching revision of the restrictions which its predecessor put upon the freedom of Canada to negotiate for the reciprocal reduction of tariff rates with third countries. Many items on which the differential margin between the British Preferential and Intermediate tariffs had operated either to limit Canadian trade treaty negotiations with foreign countries, to maintain prices of imported or domestic goods at unduly high levels, or in which five years' experience had shown that United Kingdom industries had not made or were not likely to make full use of the preferences afforded them, have been dropped from the Schedule, and in 21 cases the margins of preference on items remaining have been reduced."

THE COMMISSIONER: Can anyone tell me offhand

MR. MACDONALD: In reply to that item of the resolution of these meetings, my first, it appears on page 25 of the budget are out:

"The reduction in the number of tariff items on which margins of preference are found against decreases, from 215 in the 1932 agreement to 91 in Schedule V of the present agreement, is further evidence of the effort that has been made to reconcile the principle of preference with the necessity of removing barriers that stood in the way of international trade. The new agreement contains a radical and far-reaching revision of the provisions which its predecessor put upon the freedom of Canada to negotiate for the mutual reduction of tariff rates with third countries, the items on which the differential margin between the British Preferences and Intermediate tariff is operated either to limit Canadian trade treaty negotiations with foreign countries, to maintain prices of imported or domestic goods at unduly high levels, or in which five years' experience had shown that United Kingdom industries had not made or were not likely to make full use of the preference. [illegible] the schedule, and in 21 cases the margins of preference on items that have been reduced."

THE COMMISSIONER: Can anyone tell me of the

whether or not rayon importations have been touched?

MR. KELLOCK: Yes, my lord.

MR. HOOPER: The fabrics duty has been reduced from 30 to 27½ per cent.

MR. BERRY: Threads and cords, from 17½ per cent to 15½ per cent.

MR. KELLOCK: I come to this in the next section of my brief this morning and I will give it to your lordship.

" Paragraph 15. In 1932 when the provision was established that the preferential duty rates should be based on the principle of equalizing cost of production in Great Britain and Canada, the principle was also confirmed that there should be a preferential spread in duty rates between those applying on products of British manufacturers and the products of other countries. As long as this spread is to be maintained, it follows that the equalization of cost of production between Canada and foreign countries is not necessarily involved in the establishment of duty rates applicable to those foreign countries, although they must at least achieve that much. As pointed out, under any tariff rate there will be certain products which are under protected and the establishment of a tariff rate on a group of products, which on the average would be more than sufficient to equalize the cost of production between Canada and any foreign country of that group, need not at the same time be prohibitive

[illegible] by the Japanese Imperial Navy [illegible]

Mr. Lamont: I ask, Mr. Lord,

Mr. Burton: The Tariff [illegible] have been reduced from [illegible] to 4½ and 5½.

Mr. Smith: Dyeing and [illegible], from 17½ per cent to 15½ per cent.

Mr. [illegible]: I come to this in the next section of my brief this morning and I will give it to your Lordship.

" Paragraph 18. In 1932 when the previous [illegible] established that the protectional duty rates should be based on the principle of equalizing cost of production in Great Britain and in the producing [illegible], the protectional period in only rates between those applying on products of British manufacture and the products of other countries. So long as this period is to be maintained, it follows that the equalization of cost of production here and foreign countries is not necessarily involved in the actual amount of duty rates applied. In the Ottawa Agreements, [illegible] they must at least achieve that end. As pointed out, some duty tariff rates there will be [illegible] products which are under protected and the establishment of a tariff rate on a group of articles, which on the average would be more than sufficient to equalize the cost of production [illegible] and any foreign country of that group, [illegible] [illegible]

"on imports of all products dutiable under that item from such foreign country because of the fact that under any item there will be products which are less protected than the average of the group".

Some products may be produced sufficiently cheaply in other countries, owing among other things to a larger market and mass production, which brings down the cost of the unit and permits importation here even under the intermediate or the general rate in competition with the domestic or the British producer.

I then deal with "Woollen and Knitting Duties". First, with regard to --

"Raw wool: The rates in tariff item 549 which covers wool, the hair of the camel, alpaca, goat or other like animal, not further prepared than combed, are the results of the Canadian-New Zealand Trade Agreement of 1932 and the Canada-France Trade Agreement of 1933. Under the Canadian-New Zealand agreement Canada agreed to admit wool from that country free of duty and make it dutiable from foreign countries at 10 cents per lb. under the Intermediate tariff and 15 cents per lb. under the General tariff. All British countries have the New Zealand tariff. The item was modified in 1933 when France, and therefore all countries with favoured nation treaties, was allowed a discount of 20 per cent off the Intermediate

"on imports of all products tariffable under that item from such foreign country because of the fact that under any item there will be products which are less protected than the average of the group".

Some products may be produced quite basically in some countries, using cheap labour or larger modern plant and processes, which enjoy the cost of the unit and provide important a base even under the intermediate or the general rate in comparison with the Canadian or the British producer.

I then dealt with "woollen and knitting yarns", with regard to --

"New Wool: The rates in tariff item 849 which covers wool, the hair of the sheep, alpaca, goat or other like animal, not further prepared than combed, are the results of the Canada-New Zealand Trade Agreement of 1932 and the Canada-France Trade Agreement of 1933. Under the Canada-New Zealand agreement Canada agreed to admit wool from that country free of duty and have it available from foreign countries at 10 cents per lb. under the intermediate tariff and 15 cents per lb. under the General tariff. All British countries now have the New Zealand tariff. The item was modified in 1932 when France, and therefore all countries with favoured nation treaties, was allowed a discount of 20 per cent off the intermediate

"tariff rate on the hair of the camel, alpaca and goat, but not on wool. The purpose of this item was that the industry when buying wool and wool tops outside of Canada should buy in empire countries, and not from foreign countries such as the Argentine. The terms of the tariff item prevent the Canadian industry from buying foreign wools to blend with empire wool, carpet wools from Asiatic countries which are the principal sources of supply or tops blended with foreign wools, and the result has been that in 1935 calendar year 31 per cent of the total value of direct import into Canada from New Zealand was wool and 22 per cent of the total value of direct imports from Australia was wool and tops. The direct trade with New Zealand and Australia under this item through purchases by the woollen and knitting industry is a substantial factor in maintaining trade agreements with these countries favourable to products produced by Canadian industrial workers in other than this particular industry.

Wool Yarn and Wool Cloth: The present Canadian tariff items covering wool yarn and wool cloth are eleven in number, of which seven are free of duty under the British Preferential Tariff. The rates in the four dutiable items were set as a result of a Tariff Board Report brought down in March, 1935, the recommendations being implemented in the budget of March of that year. The recommendations of the Tariff Board were based

"tariff free on the hair of the camel, alpaca and goat, but not on wool". The purpose of this item was that the industry when buying wool and wool tops outside of Canada should buy in empire countries, and not from foreign countries such as the Argentine. The terms of the tariff item prevent the Canadian industry from buying foreign goods to blend with empire wool, except wools from adjoining countries where the original source of wool or tops blended with foreign wools, and "provided" has been that in less calendar year it not cost or the total value of direct import into Canada from New Zealand was wool and 25 per cent of the total value of direct imports from Australia was wool and tops.

The direct trade with New Zealand and Australia under this item through purchases by the woollen and knitting industry is a material factor in a bargaining trade agreement with these countries because to produce products by Canadian industry careers in other t ban this [illegible]

[illegible]

cloth are eleven in number, of which seven are free of duty under the British Preferential tariff. The items in the four British items were set as a result of a Tariff Board Report brought down in March, 1931. The recommendations were implemented in the budget of March of that year.

The recommendations of the Tariff Board were

"on an investigation into the industry under Article XI of the then existing agreement, the British-Canadian agreement of 1932".

I have set that out, but will not read it.

I submit again, my lord, that up to that point, at least, the same principle applies -- that these duties were set as the result of evidence as to what was the respective cost of production in those countries and reasonable competition between the two.

"Exhibit 640 sets out a short summary of tariff changes as they affect wool yarn and cloth, as follows:

1930 Under the duties in effect in 1930 the Canadian cloth industry had only 22.3 per cent of the home market for cloth, the foreign cloth manufacturers supplied 21.4 per cent and the cloth manufacturers of Great Britain 55.3 per cent. In September 1930 the Canadian duty rates on wool yarns and cloth were substantially increased.

1931 In June 1931 yarns wholly of mohair and alpaca for cut pile fabrics were made free from Great Britain. At the same time a 1 per cent excise tax was applied on all imports. In September 1931 and pound sterling dropped below par in Canadian dollars and currency dumping duty became effective on British goods. In October 1931 the fixed value of the pound sterling was set at $4.40

"on an investigation into the industry under Article XI of the then existing arrangement, the British-Canadian agreement of 1937".

I have set that out, but will not read it.

I submit again, my lord, that up to that point at least, the same principle applies -- that there were not as the result of evidence as to what was the respective cost of production in those countries and reasonable comparition between the two.

"Exhibit 630 sets out a short summary of tariff changes as they affect wool yarn and cloth, as follows:

1930 Under the duties in effect in 1930 the Canadian cloth industry had only 3.5 per cent of the home market for cloth. The foreign manufacturers supplied 41.4 per cent and the cloth manufacturers of Great Britain 55.1 per cent. In September 1930 the Canadian duty on wool yarns and cloth were substantially increased.

1931 In June 1931 yarns mainly of mohair and alpaca for automobile fabrics were made free from duty at Ottawa. At the same time a 1 per cent excise tax was applied on all imports. In September 1931 and again in April proposed below par in Canadian dollars and currency dumping duty became effective on October 1st. In October 1931 the fixed value of the pound sterling was set at

"and the special duty was the difference between the average exchange rate and $4.40.

1932 In May 1932 wool not further advanced than tops was made dutiable from foreign countries at rates which gave a monopoly of the Canadian market to empire grown wools. In April 1932 the excise tax on all British and foreign imports was increased to 3 per cent. In this year the Ottawa Imperial Conference was held and the agreement arrived at was implemented by parliament in October 1932 by:

(1) A reduction on all specific duties under the British Preferential on yarns and cloth by 25 per cent and on blankets by 50 per cent.

(2) Providing the following items to be free of duty from Great Britain:

(a) Italian lustres and linings.

(b) Fabrics in grey weighing 4 ounces to square yard or less.

(c) Billiard cloth.

British goods were at the same time made exempt from valuations under Section 48.

1933 In March 1933 the fixed value of the pound sterling was reduced to 4.25 and in May 1933 the currency dumping duty became inaffective as the pound sterling was above this figure. In 1933 the Tariff Board

had the general duty was the difference between the average ad valorem rate and 14.4%.

1922 .. In May 1922 wool not further processed than tops was made dutiable from free in consequence of rates which gave a measure of the protection sought to manufacture piece goods in Canada. In April 1922 the ad valorem duty and foreign imports was increased to 6 per cent. In this year the Tariff Conference was held and the agreement arrived at was implemented by parliament in October 1922 by:

(1) A reduction on pig iron, steel ingots and the articles specified in items and also by 25 per cent and on bicycles by 20 per cent.

(2) Providing the following items to be free of duty from Great Britain:

(a) Linoleum lasting and linings.

(b) Jeblins in grey mackinaw & canvas to square yard or less.

(c) Billiard cloth.

British goods were of the same time made exempt from preferential rates.

1923 In March 1923 the final value of the pound sterling was reduced to 4.85 and in May 1923 the preferential rate was made ineffective as the pound sterling was at this figure. In 1924 the "tariff board

"commenced to deal with an application for a review of duties on wool yarn and cloth from Great Britain.

1934 In April 1934 the excise tax on British goods was reduced from 3 per cent to 1½ per cent, while the 3 per cent was left on foreign goods. In 1934 the Tariff Board's interim report on wool duties revealed the difficulties met with up to that time in dealing with the British proposals.

1935 In March 1935 the excise tax was removed entirely from British goods and left at 3 per cent on foreign goods. On March 21st, 1935, the Tariff Board brought down its final report on the yarn and cloth industry, and their findings were implemented in the budget of March 22nd, 1935."

What the board said is:

" The present set of tariff rates on various items of wool fabrics provide a virtual monopoly in the Canadian market for light weight cloths imported under tariff items 554 and 554c, while on fabrics costing over $2, a pound the limiting clause --

That limiting clause, my lord, is that the duty should not exceed 65 cents a pound.

" -- in tariff item --"

Which has now been reduced, my lord, since yesterday, to 50 cents a pound.

MR. McRUER: The former ones are not made in

"commended to Ottawa with an application for a review of duties on wool yarn and cloth from Great Britain.

1924 In April 1924 the ad valorem tax on British goods was reduced from 5 per cent to 15 per cent, while the 5 per cent was left on foreign goods. In 1924 the Tariff Board's interim report on wool fabrics revealed the difficulties met with so to that time in the way with the British proposals.

1925 In March 1925 the ad valorem tax was removed entirely from British goods and left at 5 per cent on foreign goods. On March 31st, 1925, the Tariff Board brought down its final report on the yarn and cloth industry, and their findings were implemented in the budget of March 32nd, 1925."

What the Board said is:

" The present set of tariff rates on various kinds of wool fabrics provide a virtual monopoly in the Canadian market for light weight cloths imported under tariff Item 324 and 326, while on fabrics costing over $2, a pound the limiting clause --

That limiting clause, my Lord, is that the duty should not exceed 35 cents a pound.

" -- in tariff item --"

[illegible] has now been reduced, my Lord, since yesterday, [illegible] 30 cents a pound.

[illegible]

Canada.

MR. KELLOCK: I have just said in my brief that the effect of the reduction was to give a monopoly to the British exporter.

MR. McRUER: But they were not made in Canada.

THE COMMISSIONER: You say the present reduction is fifty cents?

MR. KELLOCK: Yes. The duty shall not exceed fifty cents a pound.

THE COMMISSIONER: Is there a question whether or not these light weight cloths are made in Canada?

MR. KELLOCK: They are not now, my lord.

THE COMMISSIONER: Since this agreement?

MR. McRUER: They never were.

MR. KELLOCK: Since 1932, at least.

THE COMMISSIONER: Do you mean to say that this agreement killed their manufacturer in Canada?

MR. KELLOCK: Mr. Berry tells me, my lord, that he knows that, prior to 1932, at least one mill that was set up to make these cloths. The Tariff Board say that the rates which were in effect when they made their report on 22nd March, 1935, provide a virtual monopoly in the Canadian market for the British manufacturer.

MR. McRUER: What I am wondering about is on what the Tariff Board based its report. These goods were not made in Canada, whether or not a mill was set up to make them. How could the Tariff Board base its report on the principle that my friend was suggesting, that is the relative cost of production?

Counsel.

MR. ROBSON: I have just said in my brief that the effect of the reduction was to give a monopoly to the British exporter.

MR. [illegible]: But they are not made in Canada.

THE COMMISSIONER: You say the present rate is fifty cents?

MR. ROBSON: Yes. The duty should not exceed fifty cents a pound.

[illegible] in the [illegible] not these light weight clothes are made in Canada?

MR. ROBSON: They are not now, my lord.

[illegible]

MR. MACLEAN: They never were.

MR. ROBSON: Since 1922, at least.

THE COMMISSIONER: Do you mean to say that the agreement killed their manufacture in Canada?

MR. ROBSON: No, I only tell me, my lord, that he knows that, prior to 1922, at least one mill that was set up to make these clothes. The Tariff Board say that the rates which were in effect when they made their report on Xmas Goods, 1922, provide a virtual monopoly in the Canadian market for the British manufacturer.

MR. [illegible]: What I was wondering about is as that the Tariff Board based its report. These goods were not made in Canada, whether or not a mill was set up to make them. How could the Tariff Board [illegible] suggesting, that in the relative cost of production

THE COMMISSIONER: Perhaps this was an industry not fully established. Special considerations come in.

MR. McRuer: No, it dealt with it in the other way. It made them free.

THE COMMISSIONER: Yes. That is perhaps the argument that Mr. Kellock may put forward. Here is an industry about to be established.

MR. KELLOCK: The Tariff Board did not make it free. The Ottawa agreement made it free.

MR. McRUER: But the Tariff Board left it the same way, on the application.

MR. KELLOCK: Yes, they confirmed the situation.

THE COMMISSIONER: By this time the mill had ceased to make the cloth.

MR. KELLOCK: Yes my lord it had.

THE COMMISSIONER: There you have a pretty good case of what a tariff ~~should~~ may do; because there was one mill set up to manufacture a particular cloth, is it to be argued that therefore there should be a duty on that particular fabric so that importations should be stopped?

MR. KELLOCK: I am not arguing that, my lord.

THE COMMISSIONER: You would go pretty far if you did.

MR. McRUER: That is what they did with the linen, did they not?

MR. KELLOCK:

"....The limiting clause in tariff item 534b results in a reduction of the percentage of duty." And that is further reduced to 50 cents instead of

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THE COMMISSIONER: Perhaps this was an indirect fully authorized. Certain considerations come in

MR. McGUIRE: No, it dealt with it in the other way. It made them free.

THE COMMISSIONER: Yes. That is perhaps the argument that Mr. Kilbourn may put forward. Here is an industry about to be established.

MR. LEDUC: The Tariff Board did not make it free. The Ottawa agreement made it free.

MR. McGUIRE: But the Tariff Board dealt with the same way, on the application.

MR. LEDUC: Yes, they interfered the situation.

THE COMMISSIONER: By this time the mill had ceased to make the cloth.

MR. ALLDER: Yes my lord it had.

THE COMMISSIONER: There you have a pretty case of what a tariff amounts to; because there was one mill, say an [illegible] partnership firm, in [illegible] to be argued that therefore there should be a duty on their particular fabric so that importations should be stopped?

MR. ALLDER: I am not arguing that, my lord.

THE COMMISSIONER: You would go nearly far I am sure.

MR. McGUIRE: That is what they did with the linen, did they not?

MR. [illegible]

"...the tariff clause in tariff item 5889 results in a reduction of the percentage of duty

65 cents.

"The result is that Canadian production tends to be concentrated in those types of fabrics which could be expected to be most efficiently produced in Canada."

THE COMMISSIONER: Well, is that not right? Are you querrelling with that?

MR. KELLOCK: No. At one end of the scale of production you have the light cloths, four to six ounce, that the British exporter has a monopoly in.

THE COMMISSIONER: Yes. They are not made in Canada at all.

MR. KELLOCK: At the other end of the scale you have got the fancy worsteds and those over the figure of $2 a pound, and that leaves for the Canadian industry principally plain goods, medium and heavy woollens and plain worsteds, and those are the ones on which the Canadian industry centres its effort. Since yesterday here are the changes which affect the situation. I will give your lordship the item and the description of the article and first the old rate and then the new rate.

The first one is item 549c, which is hair cloth; the old rate 40 per cent, the new rate 17½ per cent.

MR. McRUER: Is that made in Canada?

MR. KELLOCK: Oh, yes. Then 551 is the item sale yarn, or yarns for sale. The old rate was 15 per cent and 11½ cents per pound. The new rate is 15 per cent and 6 cents per pound. Then 551a,

65 cent lb.

"The result is that, realizing production trends, be concentrated in three types of fabrics which could be manufactured [illegible] in Canada."

THE COMMISSIONER: Well, is that one point you quarrelling with there?

MR. KILLOCK: No. At one end of the scale [illegible] the Lion Cloths, just to say that the British exporter has a monopoly in.

THE COMMISSIONER: Yes. They are not made in Canada at all.

MR. KILLOCK: At the other end of the scale [illegible] have got the fancy worsteds and those over the price of $2 a pound, and that leaves for the Canadian industry primarily plain goods, worsted and heavy woollens and plain worsteds, and those are the ones on which the Canadian industry centres its efforts. Since yesterday there is the change which affects the situation. I will give you [illegible] the item and the description of the article and first the old rate and then the new rate.

The first one is item 3000, which is hair cloth; the old rate 25 per cent, the new rate 17½ per cent.

MR. MONK: Is that made in Canada?

MR. KILLOCK: Oh, yes. Then 3021 is the item [illegible], or gauze for sale. The old rate was 15 [illegible] 12½ [illegible]. The new rate is [illegible]

manufacturing yarns, the old rate was 10 per cent and 7½ cents; that has been changed to 10 per cent and five cents. Then 552, pressed felt, the old rate is 15 per cent and 7½ cents, the new rate 15 per cent and 5 cents. 553, blankets, the old rate was 22½ per cent and 10 cents, the new rate 20 per cent and 5 cents. 554, that is the 4 ounce to 6 ounce grey cloth, the light weight cloths, the old rate was 20 per cent and 9½ cents, the new rate is 17½ per cent and 7½ cents. 554b, this is wool cloth and this is the principal item that affects the Canadian product, the old rate was 21½ per cent and 17 cents, the new rate is 22½ per cent and 12 cents. We think that is a substantial reduction.

THE COMMISSIONER: It raises the ad valorem, apparently.

MR. KELLOCK: No, it decreases both.

THE COMMISSIONER: I thought you said 22½ cents.

MR. KELLOCK: The old was 27½ per cent and 17 cents, the new is 22½ per cent and 12 cents.

THE COMMISSIONER: And that is the most far-reaching change?

MR. KELLOCK: That is the main item.

THE COMMISSIONER: At least in the wools?

MR. KELLOCK: Yes my lord, that is the main item in the wools.

MR. McRUER: There is a rider to that providing that the sum of the specific and ad valorem duties imposed under this item on the British preferential tariff shall not be in excess of 50 cents a pound.

manufacturing process. The old rate was 10 per cent and
7½ cents; that has been changed to 10 per cent and 7½
cents. Then the, standard cloth, the old rate is 15
per cent and 7½ cents, the new rate is 15 per cent and 8
cents. 555, blankets; the old rate was 15½ per cent and
10 cents, the new rate 20 per cent and 3 cents. 554,
there is the 4 ounce to 6 ounce grey cloth, the lightest
weight cloths, the old rate was 20 per cent and 3½ cents
the new rate is 17½ per cent and 3½ cents. 556,
this is wool cloth and this is the principal item that
affects the Cowichan product, the old rate was 15
per cent and 17 cents, the new rate is 25 per cent and
12 cents. We think that is a substantial reduction.

THE CHAIRMAN: It raises the ad valorem
equivalent.

MR. KINGDON: No, it decreases both.

THE CHAIRMAN: I thought you said 25 cents.

MR. KINGDON: The old was 27½ per cent and 17
cents, the new is 25½ per cent and 12 cents.

THE CHAIRMAN: And that is the most for-
midable item?

MR. KINGDON: That is the most item.

THE CHAIRMAN: At least in the wools?

MR. KINGDON: Yes my Lord, that is the main item
in the wools.

MR. [illegible]

MR. KELLOCK: It used to be 65; it is now 50. That is what I gave to your lordship previously.

THE COMMISSIONER: Does that apply only to this item?

MR. KELLOCK: Just to that item yes. There is an item described in the agreement as ex. 554b, that is it is taken out of the former item 554b, and that is filter cloth. The old rate was 21½ per cent and 17 cents and the new rate is 20 per cent with no specific duty. And the last one, also a very important item is 555 called "clothing and manufactured articles."

THE COMMISSIONER: "Manufactured articles". That is pretty far-reaching is it not?

MR. HOOPER: Manufactured articles of wool.

MR. McRUER: Articles made from woven fabrics.

MR. KELLOCK: The old rate was 30 per cent and 18¾ cents. The specific duty is entirely removed and the ad valorem remains at 30 per cent.

MR. McRUER: That would apply to our overcoats, would it not?

MR. KELLOCK: That particular item. The way I describe it compendiously is, "Clothing and manufactured articles of clothing, wearing apparel and articles made from woven fabrics, and all textile manufactures, wholly or partially manufactured, composed wholly or in part of wool or similar animal fibres, but of which the component of chief value is not silk nor artificial silk, n.o.p.; fabrics, coated or impregnated, composed wholly or in part of yarns of wool or hair, but not containing silk nor artificial

Mr. [illegible]: It need to be 60; it is now 30. This is why I have to pass legislation [illegible].

Mr. [illegible]: Does that actually include [illegible]?

Mr. [illegible]: Just to that item. There is an item described in the government as [illegible]. What is it is there out of the income item [illegible], and what is fitter cloth. The old rate was 60 per cent, and [illegible] and the new rate is 30 per cent with no specific duty. And the last one, [illegible] item is 383 called "clothing and wearing-apparel [illegible]".

That is merely the-wording in it now?

Mr. [illegible]: [illegible].

Mr. [illegible]: Articles made from woven textile [illegible]

Mr. [illegible]: The old rate was 10 per cent and 15 per cent. The specific duty is entirely removed and the ad valorem rate is of 20 per cent.

Mr. [illegible]: Just would apply to our [illegible] would it not?

Mr. [illegible]: That section or item. The [illegible] woven textile or clothing, wearing apparel and articles made from woven textile, and all textile manufactures, wholly or partially manufactured, composed wholly or in part of wool or a textile vegetable fibre, but or which the component of animal origin are silk or artificial silk, n.o.p.; footwear, coverings [illegible], composed wholly or in part of [illegible] [illegible] or silk, but not containing other [illegible]

silk, n.o.p;"

Then on page 11 I say:

" The points that appear to be important are:

That the present dutiable items --"

and that will have to be, "the late" dutiable items.

THE COMMISSIONER: We will adjourn for a few minutes.

Page 17000 follows

-- On resuming after recess.

MR. KELLOCK: "The points that appear to be important are:-

That the present dutiable items on yarn and cloth are the result of a review by the Tariff Board under the British-Canadian Agreement of 1932",

and that report was made in March of 1935, and whatever the evidence may be, my lord, as to any change on this side of the water there is no evidence at all as to what there has been in the way of change of British costs of production.

" That in regard to wool yarn the Tariff Board in their final report said: 'The Board is satisfied from the evidence that, on the basis of prices current at the beginning of 1935, the existing compound duty is less than sufficient to equalize the costs of British and Canadian spinners producing worsted yarn for sale to weavers, except on coarser counts of white yarn used in weaving'".

THE COMMISSIONER: Just a minute; this was said in March, 1935?

MR. KELLOCK: Yes, my lord. That is what I had in mind a little earlier when your lordship asked me, and if it was less then unless the Canadian cost has come down since then the new rates --

THE COMMISSIONER: Or British costs gone up.

MR. KELLOCK: Or British costs gone up -- these new rates simply aggravate that situation, and we have

— on Sunday (The Sunday).

MR. BRIGDEN: "The points that appear to be important are:—

"The two pre-war British linen on yarn and cloth are the result of a review by the Tariff Board under the Anti-Dumping Act of

;

and that report was made in March of 1950, and the evidence was be, my Lord, as to any change on this side of the water there is no evidence at all as to what there has been in the way of changes of British costs of production.

" That is treated by Wood from the Tariff Board in their final report said: 'The Board is satisfied from the evidence that, on the basis of prices ruling at the beginning of 1949, the existing duty is less than sufficient to equalize the costs of British and American linen producing worsted yarn for sale to weavers, except on coarser counts of white yarn used in weaving'".

THE COMMISSIONER: Don't quote: this was said

MR. KELLOCK: Yes, my Lord. That is what I had in mind a little earlier from your Lordship asked me, and it was long then unless the Commission could look down since then the new rates —

THE COMMISSIONER: Or British costs gone up.

MR. KELLOCK: It has kept pace — these

no evidence on it one way or another.

" That in 1935 the British cloth manufacturers supplied 40% of the Canadian market, Canadian mills 58%, and foreign mills 2%. It is submitted that it is inconceivable that the Canadian industry could exist indefinitely on any smaller proportion of its own market.

That in each of the last five years Canada has been the largest purchaser from Great Britain of woollen and worsted cloth of any country, inside or outside the Empire."

THE COMMISSIONER: I am safe in saying, am I not, that the Canadian woollen industry has no export trade?

MR. KELLOCK: I think that is quite true, my lord; yes, that is right, my lord.

" That the woollen and knitting industry was in addition a good customer for the wool trade in Great Britain, purchasing in 1935, 9,400,000 lbs. of wool tops, 2,500,000 lbs. of yarn and 5,500,000 lbs. of wool."

I would conclude that my friend's request for lower duties does not apply to these goods in view of the report of the Tariff Board, and, in fact, my friend doesn't even mention them in his brief.

MR. McRUER: Knit goods?

MR. KELLOCK: No, woollen goods; I am coming to knit goods in a minute.

MR. McRUER: Woollen goods; what do you mean by woollen goods?

no matters or in one way or another.

What in fact the British close market obtained and of the American market, supplied and supplied 40% of the Canadian market, supplied 60%, and foreign still 5%. It is submitted that it is incomprehensible that the Canadian industry could exist independently on any reasonable proportion of its own market.

What in each of the last five years Canada has seen the Canadian production from fifty and sixty million and moreover [illegible] in Canada the [illegible].

The [illegible] I am sure in saying, as I have that the Canadian position in world has no equal [illegible]. [illegible]: I think that is quite true, Mr. [illegible] Yes, that is right, Mr. Dunn.

When the woollen and knitting industry [illegible] in [illegible] I [illegible] direct industry production is 1108, 9,000,000 lbs. of wool noils, 2,000,000 lbs. of yarn and 5,700,000 lbs. of wool.

I would conclude that my friend's remarks for I must [illegible] report of the Tariff Board, and, in fact, as [illegible] doesn't even mention them in his brief.

Mr. [illegible]: [illegible]

Mr. [illegible]: [illegible]

[illegible]

Mr. [illegible]

[illegible]

MR. KELLOCK: Woollen goods itself, woollen and worsted goods.

MR. McRUER: I discuss them.

THE COMMISSIONER: You say the woollen and knitting industry. The word knitting means woollen knitting?

MR. KELLOCK: No, my lord, that is the general heading there. I am coming to the knitting end of it separately. I mention the carpet industry first and then knitting.

THE COMMISSIONER: In any event, you mention it in this connection, where the knitting industry employs wool.

MR. KELLOCK: Yes, my lord, I do; that is right. It is a customer of Great Britain. With regard to carpets perhaps I might give your lordship the changes in carpets before I touch that. The old rate --

THE COMMISSIONER: Just a minute now.

MR. KELLOCK: I haven't the item. 672--

MR. HOOPER: 572.

MR. KELLOCK: 572, I am sorry.

THE COMMISSIONER: What is the article?

MR. KELLOCK: It is carpets.

MR. McRUER: It is described a little differently. Oriental and imitation oriental rugs or carpets and carpeting, carpets and rugs.

THE COMMISSIONER: Anyhow it is item 572.

MR. KELLOCK: Oriental and imitation oriental rugs or carpets, carpeting.

THE COMMISSIONER: What was the old rate?

MR. MELLOR: Woollen goods itself, woollen and worsted goods.

MR. MERRITT: I discuss them.

THE COURT OF KING: You say the woollen and knitting industry. The word knitting means woollen knitting?

MR. MELLOR: No, my Lord, that is the general heading there. I am coming to the knitting one of it separately. I mention the cotton industry first and then knitting.

THE COURT OF KING: In any event, you mention it in this connection, where the knitting industry applies to wool.

MR. MELLOR: Yes, my Lord, I do; that is right. It is a sequence of broad patterns. I'm trying to compute periods I might give you roughly the change in sources before I touch that. The old rule --

THE COURT OF KING: Just a minute now.

MR. MELLOR: I know it was from --

THE COURT OF KING: --

MR. MELLOR: Oh, I am sorry.

THE COURT OF KING: What is the article?

MR. MELLOR: It is oriental.

MR. MERRITT: It is described a little differently, Oriental and imitation oriental rugs or carpets and carpeting, carpets and rugs.

THE COURT OF KING: Anyone it is like --

MR. MELLOR: Oriental and imitation oriental rugs or carpets, carpets.

THE COURT OF KING: Well, go ahead.

MR. KELLOCK: The old rate was 30% and 3 cents per square yard.

MR. McRUER: Or five cents, depending on the value.

MR. HOOPER: Square foot.

THE COMMISSIONER: Square foot, is that right, three cents per square foot?

MR. McRUER: 3 and 5 depending on the value.

THE COMMISSIONER: The lesser value is 3 and the higher value is 5.

MR. KELLOCK: Here it is, my lord. If valued at less than $2.00 per square fm yard 30% and per square foot 3 cents. If valued at $2.00 or more per square yard 30% and per square foot 5 cents. Now, the new rate is simply 30%. The specific duties are all off.

THE COMMISSIONER: That is all about carpets.

MR. McRUER: No change in the other.

MR. KELLOCK: What other?

MR. McRUER: In the intermediate or general?

MR. KELLOCK: No.

MR. HOOPER: Or the other carpet item.

MR. KELLOCK: Quite right; what is that carpet item?

MR. HOOPER: 571.

MR.McRUER: Floor rugs.

MR. KELLOCK: Oh well, 571 is carpeting, rugs, mats, and matting of straw, hemp, flax, tow, jute or paper.

MR. HOOPER: That is quite an item.

THE COMMISSIONER: Was there any change?

MR. HOOPER: There is no change in that item.

MR. KELLOCK: "In 1930, due to the rapidly declining market, the Canadian parliament granted increased tariff protection in order to preserve for the industry its home, and only, market, but since that time the 1930 tariff rates were twice substantially reduced under the British Preferential tariff.

In considering the British Preferential tariff rates, it is of the greatest importance that it be understood these cover importations from British India as well as from Great Britain"-- I should say there, my lord, as I show in section "E" of my factum, in paragraph 16, 60.3% of all imports of carpets in 1935 were from Great Britain and British India.

THE COMMISSIONER: What per cent?

MR. KELLOCK: 60.3%, my lord, in 1935.

"-- and also the British manufacturer is complaining of unfair competition from this Empire country"-- that is India -- "where wage costs are extremely low in comparison to the wage costs in Western countries. It should be noted that the dollar value of imports of carpets into Canada from British India was 18.3% higher in 1935 than in 1930.

The sales of carpets by the industry in Canada decreased from $4,801,066 in 1930 to $2,109,326 in 1932 and $3,149,198 in 1934. But the carpet

MR. MORRIS: There is no change in that item.

MR. MILLOCK: "In 1929, due to the rapidly devaluing currency, the Canadian government granted increased tariff protection in order to preserve for the industry its home, and only, market. But since that time the 1930 tariff rates were twice substantially reduced under the British preferential tariff.

In considering the British Preferential tariff rates, it is of the greatest importance that it be understood these cover importations from British India as well as from Great Britain"-- I should say there, my Lord, as I show in section "E" of my factum, in paragraph 18, 88.3% of all imports of cement in 1930 were from Great Britain and British India.

THE COMMISSIONER: What per cent?

MR. MILLOCK: 88.3%, my Lord, in 1930.

"-- and also the British manufacturer is competing of unfair competition from this empire country"-- that is India -- "where wage costs extremely low in comparison to the wage costs in foreign countries. It should be noted that the dollar value of imports of cement into Canada from British India was 18.3% higher in 1929 than in 1928.

The sales of cement by the industry in Canada increased from 4,401,006 in 1930 to 8,109,000 in 1932 and 8,129,000 in 1934. But the cement

"industry in England during this period increased its production from 21.5 million square yards in 1930, to 28.6 million square yards in 1933 and 31.4 million square yards in 1934. It is quite clear from these British carpet figures, and from other data in Exhibit 641, that the British industry did not suffer from the curtailment of its market in Canada; while the Canadian factories, which must depend entirely on the Canadian market, could not have continued operations without the share of the market they are obtaining."

THE COMMISSIONER: They do not export anything.

MR. KELLOCK: No, my lord.

MR. McRUER: It is the converse there of what they had in the cotton trade, that the British companies have been prosperous so that they would not be suffering from low cost production over there.

MR. KELLOCK: It does not say anything about their prosperity. It shows the way in which they have increased their production.

" Due to the fact that wool, not further advanced than tops, is dutiable if imported from non-Empire countries, Empire countries are given the monopoly in supplying raw wool and tops to the Canadian manufacturer. The British manufacturer can buy wools and practically all other raw materials from world wide markets and in this way has a considerable advantage."

THE COMMISSIONER: Now, just a minute; alright.

MR. KELLOCK: What I am referring to there, my lord,

"[illegible] in England during this period increased its production from 2.5 million square yards in 1800, to 24.0 million square yards in 1820 and 51.4 million square yards in 1833. It is quite clear from these British account figures, and from other men in British 'Ill, that the British industry did not suffer from the artificiality of its market in Canada; while the Canadian industry, which had [illegible] Canadian market, could not have maintained growth without the share of the market they were obtaining [illegible]; they do not support anything.

[illegible], or [illegible].

Mr. [illegible]: If is the average figure of wage [illegible] in the cotton trade, then the British countries have been prosperous so that they could not be suffering from low cost production over there.

Mr. [illegible]: It does not say anything about prosperity. It shows the way in which they have increased their [illegible].

" Due to the fact that wool, not further manufacture than tops, is cheaply if imported from [illegible] countries, major countries are [illegible] economically in supplying raw wool and tops to the [illegible] manufacturer. The [illegible] manufacturer can buy wools and practically all other raw materials from world wide markets and in this [illegible] [illegible].

[illegible], just a minute; [illegible]

and what I am instructed is that the best and cheapest wools for carpet purposes are foreign wools such as Chinese wools, and the Canadian industry is prohibited in this way from buying.

MR. HOOPER: That is only for certain types.

MR. KELLOCK: Certain types of carpets.

MR. HOOPER: Certain types of carpets; not all.

MR. McRUER: Is it my friend's suggestion that the duties under the general tariff ought to be lowered in respect to those?

MR. KELLOCK: It would be a help to the industry.

MR. McRUER: Chinese would come under the general tariff, wouldn't it?

MR. KELLOCK: Yes.

MR. McRUER: Well, we ought to have a treaty with China then.

MR. KELLOCK: British industry competes with the domestic industry here and it has an advantage in buying raw material.

MR. McRUER: I see what you mean.

MR. KELLOCK: "The British carpet industry applied to the Canadian Tariff Board for a review of the Canadian carpet item, but subsequently withdrew the application without a hearing".

Now, the application was made, my lord, on the 8th of March, 1934 and was withdrawn on the 14th of February, 1935. So that my submission there is that in the interval no doubt the situation was thoroughly canvassed by the British industry, and they must have

come to the conclusion they could not substantiate that on the existing duties they were not competing on a reasonable basis having regard to the relative costs of production, and they withdrew the application.

Then, coming to knit goods and hosiery, my lord, and if I may give your lordship the changes in regard to knit goods first. The item is 568, my lord.

THE COMMISSIONER: That includes everything, does it?

MR. KELLOCK: Yes, my lord; it is knitted garments, knitted underwear and knitted goods, n.o.p.

MR. McRUER: It doesn't include hosiery, though.

MR. KELLOCK: No, I am dealing with that separately.

MR. McRUER: His lordship said hosiery.

MR. KELLOCK: This is knit goods.

THE COMMISSIONER: This is knit goods?

MR. KELLOCK: Yes, my lord. The old rate was 25% and the new rate 20%. I will give your lordship hosiery at the same time.

THE COMMISSIONER: What item is that?

MR. KELLOCK: 568-A, and first hosiery of wool.

THE COMMISSIONER: Wool is separate?

MR. KELLOCK: Yes, my lord; the old rate was 30% and 75 cents a dozen pair and the new rate is 20% and 30 cents, and on all other hosiery the old rate was the same, that is, 30% and 75 cents a dozen pair.

THE COMMISSIONER: The same thing in both cases?

MR. KELLOCK: Yes, my lord; the new rate is 20% only. There is no specific duty.

come to the conclusion that we could not substitute that on the existing duties they were not complying on a reasonable basis having regard to the relative costs of production, and they withdrew the qualification.

Then, coming to knit goods and hosiery, my lord, and if I may give your lordship the reason in regard to knit goods first. The item is 306, my lord.

THE CHAIRMAN: That includes everything, does it?

MR. ROBLIN: Yes, my lord; it is knitted gloves, knitted underwear and knitted goods, n.o.p.

MR. CHAIRMAN: It doesn't include hosiery, though.

MR. ROBLIN: No, I am dealing with that separately.

MR. MCCRAKEN: Is including knit hosiery.

MR. ROBLIN: This is knit goods.

THE CHAIRMAN: This is knit goods?

MR. ROBLIN: Yes, my lord. The old rate was 35% and the new rate 30%. I will give your lordship hosiery at the same time.

THE CHAIRMAN: What item is that?

MR. ROBLIN: 308-A, and first hosiery of wool.

THE CHAIRMAN: Wool is separate?

MR. ROBLIN: Yes, my lord; the old rate was 30% and 75 cents a dozen pair and the new rate is 20% and 30 cents, and on all other hosiery the old rate was the same, that is, 30% and 75 cents a dozen pair.

[illegible]

MR. [illegible]

THE COMMISSIONER: That applies to silk stockings?

MR. KELLOCK: Silk and cotton and artificial silk.

MR. McRUER: There has been a reduction in the British rate on Canadian silk stockings entering the British market.

MR. KELLOCK: Yes.

MR. McRUER: Reciprocal; I think Mr. Thompson suggested that would help him.

MR. KELLOCK: It would help him. There are two companies that do the exporting -- there are more than that, but I think Mr. Thompson's proportion is about 15% and the Kayser Company about 30%.

THE COMMISSIONER: Of what?

MR. KELLOCK: Of its production for export, my lord. I am coming to that later. With regard to knit goods and hosiery --

"--a review of the knot goods tariff item and the hosiery tariff item were scheduled to be heard before the Tariff Board on the request of British manufacturers, but although the Canadian industry commenced preparations for the hearing, it was never held."

Now, the application was made in 1933, my lord, and the decision not to proceed --

THE COMMISSIONER: What time in 1933?

MR. KELLOCK: I haven't the date.

THE COMMISSIONER: Withdrawn, was it?

MR. KELLOCK: I am told it was in the early part of the year, February or March; withdrawn at the

end of 1934, and the same thing applies there, I submit, my lord, that the British industry came to the conclusion they could not substantiate that the rates were not on a proper basis having regard to costs of production and competition.

" The knit goods tariff item covering underwear, knitted fabrics, outerwear and knitted articles of all textile fibres has a duty rate of 25% less 10% under the British Preferential tariff", and now 20% less 10.

THE COMMISSIONER: Well, yes.

MR. KELLOCK: Those figures I gave your lordship where they are in excess of 15%, carry the 10% reduction.

"The hosiery item is an omnibus item"-- it should be "was", now.

THE COMMISSIONER: You say it was an omnibus item.

MR. KELLOCK: It was because not it is split up between hosiery of wool and then all other materials.

"--covering socks and stockings of wool, cotton, silk, and art silk, or mixtures, for men, women and children, such as are produced in Canada in 94 mills. While the rates under this item were substantially increased in 1930, they were reduced by taking 25% off the specific duty in 1932."

Then, with regard to compound duties.

"Compound duties, that is, a combination of ad valorem and specific duties, are a necessity in the textile schedule because not only does the

"cost of the various kinds of raw material used differs widely, but prices for each kind fluctuate widely. In cloth entering Canada under one tariff item at one time the raw material used may vary from 5½¢ per lb. to over $1.00 per pound. In socks and stockings entering under one tariff item the raw material will vary just as widely as in cloth, but on a different level. No ad valorem rate will fit the tremendous variety of goods such as are covered in the woollen and knitting items.

In their final report" -- that is with regard to reference one, my lord -- "the Tariff Board said: 'The degree of protection provided by a pure ad valorem duty in an industry characterized by wide fluctuations in the price levels of its raw materials is highly unstable. When prices are rising and the volume of business is expanding, such a duty automatically provides increased protection at a time when no increase may be required, and when raw material prices are falling and the volume of business is shrinking, the difficulties of a protected industry are increased by the automatic reduction of protection'. ..... 'Such fluctuations in the values of raw materials, which are seldom accompanied by corresponding changes in industrial wages and overheads, render it impossible for any purely ad valorem duty, designed to equalize total cost of production in

POST BRANDS
CANADA

"ness of the various chart of ten a-for. I have
affore already, but notice for each kind there
already. In chart showing trade under one
tariff item at one time the materials used on
very from 5% low 1% to over 1.00 per cent. I
assume one tariffing entering in or one tariff
item the raw material will vary just as widely as
in chart, not on a different level. So on a line
made will the treasurer's valuing of goods
used as was covered in the earlier and on this
item.

In their final report -- that is with reference
to reference one, my lord -- the tariff board said:

"The degree of protection provided by a duty on
raw materials is the same as that provided by a duty
on manufactures in the price levels of the raw
material is used in manufacture. The relative
value and the volume of materials in manufacture,
and a duty accordingly would be increased
protection at a time when no increase may be
warranted, and when the reverse may be
the case. The reverse is equally true.
Duties on raw materials have a disproportionate
effect on the cost of production.

"The fluctuations in the values of raw materials
which are always experienced in occurrences
greater in industrial wages and overheads, rendering
it impossible for any tariff at a lower rate,

"'two different countries, to keep pace with changing prices'.....'One alternative to an ad valorem duty is a specific duty of so many cents per pound or yard, the incidence of which does not change with every fluctuation in the wool market'.....'As an illustration of the complexity inherent in a schedule of strictly specific rates, it has been computed that a scale of specific rates on worsted yarn, to allow for differences in count, colour, twist and method of spinning, would require as many as 160 different rates'"...

THE COMMISSIONER: That is a pretty good argument so far for the total abolition of the ad valorem.

MR. KELLOCK: I would rather rely on the last three lines, my lord.

THE COMMISSIONER: Why have it at all if it is so unfair in its fluctuations as all this? Why not have a specific and have a constant duty?

MR. KELLOCK: It would not be practical.

THE COMMISSIONER: Why not? I don't understand that.

MR. KELLOCK: You would have 160 different rates, my lord, on just that one small section of imports.

THE COMMISSIONER: That is an argument against having ad valorem duties on 160 different rates.

MR. KELLOCK: What I am coming to is the last three lines, my lord. "'A compound duty'"--

"The different examples have been so [illegible] [illegible]..... The difference [illegible] [illegible] is a specific [illegible] or [illegible] per pound or yard, one indicator of which does not always [illegible] [illegible] the wool market'.....'As an illustration of the conclusion by indicator [illegible] [illegible] of [illegible] specific duty, it has been suggested that [illegible] [illegible] specific duties on common wool, to allow for differences in grade, colour, [illegible] [illegible] of [illegible] equality, would require as many as 100 different rates'...

Mr. [illegible]: [illegible] appears to lay for the total abolition of the ad valorem.

Mr. [illegible]: I would answer only on the last three lines, my lord.

Mr. [illegible]: Why have it at all if it is so unfair in its discriminations as all that? Why not have a specific and have a consent duty?

Mr. [illegible]: It would not be practical.

The [illegible]: My note: I don't understand [illegible].

Mr. [illegible]: You would have 100 different [illegible] my lord, on just that one small section of imports.

Mr. [illegible]: That is a consent [illegible] having ad valorem duties on 100 different rates.

Mr. [illegible]: What I am coming to is the last [illegible] my lord. My general [illegible]

THE COMMISSIONER: Why introduce this unfair and fluctuating and cumbersome element in the ad valorem duty when a specific one would be constant and meet all requirements? However, go on. You haven't got to answer my question.

MR. KELLOCK: I know I haven't, but I want to, my lord. My submission about it is this, that it is quite clear what the Board are talking about so far as the ad valorem is concerned.

THE COMMISSIONER: Yes, they say it should be discarded, it is unfair. It applies when it is least needed and doesn't apply when it is most needed, and therefore the proper thing is a constant duty, such as a specific duty. Why go back and say "let us have both"?

MR. KELLOCK: I don't know that they are recommending a purely specific --

THE COMMISSIONER: No, but they point out the weakness and the unfairness of the ad valorem. They are at great pains to do that. Then they say "let us have both".

MR. KELLOCK: They go to the specific, my lord, and say that the specific is the thing, but it has got to be refined to such a point -- it cannot be applied in the way that an ad valorem duty can. It has got to be applied to the different articles and there are so many of them and such a variety that it would make the tariff so complex it would be very difficult, if not impossible, to administer, so

THE COMMISSIONER: Why introduce this social and financing and consumers element in the ad valorem duty when a specific one would be convenient and meet all requirements? However, go on. You haven't got to answer my question.

MR. [illegible]: I have a [illegible], but I want to [illegible] my [illegible]. My submission about it is this, that it is quite clear what the courts are trying about when the ad valorem is concerned.

THE COMMISSIONER: Yes, they say it should be measured. It is unfair. It applies when it is least precise and doesn't apply when it is most exact and therefore the proper thing is a measured duty, such as a specific duty. Why do look and say that we have both?

MR. [illegible]: I don't know that they are [illegible] a purely specific --

THE COMMISSIONER: No, but they point out the [illegible] and the [illegible] of the ad valorem. They are at great pains to do that. Then they say let us have both.

MR. [illegible]: They do it the specific, my lord, and say that the specific is the thing. But it has got to be modified to such a point -- it cannot be applied in the way that an ad valorem duty can. It has got to be applied to the different articles and there are so many of them and such a variety that it would make the tariff so complex it would be

that they say that a compound duty, such as now imposed --

THE COMMISSIONER: Well, why not then have an ad valorem on some and specific on the others?

MR. KELLOCK: Well, you have your objection to a pure ad valorem, and I don't know, my lord, whether there are any items on which a pure ad valorem would get away from the difffculty that they point out.

THE COMMISSIONER: That is what I say. If that is true eliminate it. If there is going to be difficulty in every item how can you justify keeping it? How does it make it any better to link it up to a specific?

MR. KELLOCK: Well, tacking on a specific to an ad valorem makes it more constant.

THE COMMISSIONER: Why must you tack it on to an ad valorem? Why must you tack on an ad valorem, something which is unfair and fluctuating, which increases when least needed and decreases when most needed?

MR. KELLOCK: If you start off with a lower ad valorem than you might have if you used a pure ad valorem, and use a combination of a lower ad valorem and specific then you get a more stable rate of duty, my lord. That is their argument.

THE COMMISSIONER: Yes, but I don't understand it.

MR. McRUER: I think you are confusing it with a minimum. They might have an ad valorem, but it should be a minimum specific or a maximum specific as

that they say that a concurrent duty, such as now imposed --

THE CHAIRMAN: Well, why not then have an ad valorem on some and specific on the others?

MR. KELLOGG: Well, you have your objection to a pure ad valorem, and I don't know, my lord, whether there are any items on which a pure ad valorem would get away from the difficulty that they point out.

THE CHAIRMAN: That is what I say. If that is true eliminate it. If there is going to be difficulty in every item how can you justify keeping it? How does it make it any better to link it up to a specific?

[illegible]

[illegible]

THE CHAIRMAN: Why must you tack it on to an ad valorem? Why must you look on an ad valorem, something which is unfair and fluctuating which increases when least needed and decreases when most needed?

MR. KELLOGG: If you start out with a lower ad valorem than you might have if you need a pure ad valorem, and use a combination of a lower ad valorem and specific then you get a more equable rate of duty and. That is their argument.

THE CHAIRMAN: Yes, but I don't understand it.

[illegible]

[illegible] They might have an ad valorem, but it would be a minimum specific or a maximum specific

in the case we have with the woollen goods now. It is a maximum of 50 cents a pound. I don't see the point in adding the two together.

MR. KELLOCK: There is this about it, my lord, that the virtue -- they point out there the disadvantage of a pure ad valorem, but the virtue of an ad valorem is that it applies on value, and as you increase the fabrication of an article the ad valorem duty increases the protection, which is the virtue of an ad valorem duty, because that is what is intended.

THE COMMISSIONER: They say the direct contrary. They say when your production is growing is when you least need it.

MR. KELLOCK: They are talking about a different thing. They are talking about volume.

THE COMMISSIONER: If you are going to discard their argument it is alright, but you put it forward as yours.

MR. KELLOCK: I am not making myself clear. What they are talking about is the contrast in ad valorem duties on the same thing at different dates. I am speaking now of an ad valorem duty on the same date on an article of different degrees of fabrication. Now, the virtue of an ad valorem duty in that situation on the same date is that it does give increasing protection to the increasing fabrication which is the intention of it. If you have an article which is only one step toward the completed article then you need a lower rate, or a lower rate of ad valorem

ROBT. BRYDIE
CHARTERED ACCOUNTANT
TORONTO CHICAGO

in the case we have with the woollen goods now. It is a maximum of 30 cents a pound. I don't see the point in making the two together.

Mr. [illegible]: There is this about it, my Lord, that the virtue -- they point out to us the [illegible] of a pure ad valorem, but the virtue of an ad valorem is that it applies on value, and as you increase the fabrication of an article the ad valorem duty increases the protection, which is the virtue of an ad valorem duty, because that is what is intended.

THE [illegible]: They are the lowest country. They say when your production is growing is when you least need it.

Mr. [illegible]: They are talking about [illegible]. They are talking about a volume.

THE COMMISSIONER: If you are going to [illegible] their argument it is plausible, but you put it towards as young.

Mr. [illegible]: I am not making myself clear. What they are talking about is the contrast in an ad valorem duties on the same thing at different dates. I am speaking now of an ad valorem duty on the same [illegible] on an article of different degrees of fabrication. Now, the virtue of an ad valorem duty is that although the same duty is that it does give increasing protection to the increasing fabrication which is the intention of it. If you have a specific duty [illegible] may then take [illegible] for manufacturing [illegible]

duty will give the necessary protection, but as you increase the degree of fabrication then you should increase the protection if you are going to protect the various persons employed.

THE COMMISSIONER: Isn't that diametrically opposed to what they say. They say when prices are rising and the volume of business is expanding such a duty automatically provides increased protection at a time when no increase is required.

MR. KELLOCK: That is on different dates. I am dealing on the same date. I am not dealing with differences in duties. I am dealing with differences in fabrication on the same date.

THE COMMISSIONER: Of the one article on the same date?

MR. KELLOCK: With different degrees of fabrication, and as you further fabricate you have more people who take part in the production of that article to protect, but the vice of it, as they point out, is if you are comparing as between different dates then as the volume and the price either goes up or down it does not have the virtue of giving the protection that it was designed to give at the time it ought to give it.

THE COMMISSIONER: It gives too much protection.

MR. KELLOCK: Yes, at one time, and not enough at another time. Then they say that a specific duty --

THE COMMISSIONER: They offer that as an alternative.

duty will give the necessary protection, but as you increase the degree of fabrication then you should increase the protection if you are going to protect the employed person engaged.

THE CHAIRMAN: Don't do so necessarily opposed to what they say. They are when prices are rising and the volume of business is expanding such a duty automatically provides increased protection at a time when no increase is required.

MR. ELLIOTT: That is on different basis. I am dealing on the same date. I am not dealing with differences in duties. I am dealing with differences in fabrication on the same date.

THE CHAIRMAN: Of the one article on the same date.

MR. ELLIOTT: With different degrees of fabrication, and as you further fabricate you have more people who take part in the production of that article to produce, but the view of it, as they point out, is if you are comparing as between different dates then as the volume and the price either goes up or goes in does not have the virtue of giving the protection the it was designed to give at the time it ought to give it.

THE CHAIRMAN: If there is some [illegible]

MR. ELLIOTT: Yes, if the duty, and not [illegible] another duty. Then that has been a [illegible] duty —

THE CHAIRMAN: That [illegible]

Now, the alternative to an ad valorem duty is a specific.

MR. KELLOCK: They say, my lord, as I understand the argument, that if you could sit down and take every item in the import list and design a proper and suitable specific duty for it that would be the way.

THE COMMISSIONER: Well, insofar as you find items where you can have a specific duty why not leave it at that? Why have an ad valorem duty as well?

MR. KELLOCK: If you could do that, yes.

THE COMMISSIONER: Is that not what they really mean, that there are certain things where you cannot have a specific duty and therefore you must put up with an ad valorem duty, however cumbersome and awkward and fluctuating it may work out, but where you can have a specific duty have that. Isn't that what they mean? They don't say have both on the same article.

MR. KELLOCK: I think they do. As I understand the judgment it is this, my lord, that to apply a specific duty -- as your lordship says you may get some articles where you can do it readily --

THE COMMISSIONER: You have, or at least you had a very great number of articles with a specific duty.

MR. KELLOCK: With a combination.

THE COMMISSIONER: With a specific duty. I say with a specific duty. Therefore it was possible

they, the alternative is an ad valorem duty, and
specific.

MR. WILSON: They say, my lord, as I understand
the argument, that if you could sit down and take
every item in the import list and design a proper
and suitable specific duty for it that would be the
way.

THE COMMISSIONER: Specific as far that
items where you can have a specific duty why not
leave it at that? Why have an ad valorem duty as well?

MR. WILSON: If you could do that, yes.

THE COMMISSIONER: Is that not what they really
mean, that there are certain things where you cannot
have a specific duty and therefore you must put up
with an ad valorem duty, however cumbersome and
and fluctuating it may work out, but where you can
have a specific duty have that. That's what
they mean? They don't say have both on the same
article.

MR. WILSON: I think they do. As I understand
the judgment it is this, my lord, that to apply a
specific duty — as Mr. Lemieux, here you can get
some articles where you can do it really —

THE COMMISSIONER: You have, at at least you
had a very great number of articles with a specific
duty.

MR. [illegible] A [illegible].

THE [illegible]: With a specific duty. I say
with a specific duty. Therefore it was [illegible]

in those cases to fix a specific duty.

MR. KELLOCK: By a combination.

THE COMMISSIONER: Why a combination? Why do you need that at all? Take, for instance, your carpets; if you are going to say so much per square foot why do you have to say so much ad valorem?

MR. KELLOCK: I suppose in carpets --

THE COMMISSIONER: I think that is what they meant. If you take an article which is incapable of having a proper specific duty fixed on it -- and carpet is one which is quite capable of it because there it is, and there is the surface and you can divide it into square feet or yards or inches, or weight it, but if you haven't such an article therefore you must have, very unfortunately according to them, this fluctuating, unfair and awkward ad valorem duty, but only in that case. That is what they must mean. Unless that is what you mean you had better not rely on that.

MR. KELLOCK: I have something in my mind but I don't think I have been successful in expressing it properly.

THE COMMISSIONER: You had better get the rest of their report and see whether you can find something in it which varies this, because as you refer to it --

MR. KELLOCK: Your lordship says carpet.

THE COMMISSIONER: Well, I say carpet.

MR. KELLOCK: Just as an illustration; if carpet was a single thing then certainly you could say specific duty so much. I am going to exaggerate my

in those cases to fix a specific duty.

MR. KEELOCK: By a convention.

THE CHAIRMAN: By a convention? Why do you need that in a Act? Then, the Commission, once it has jurisdiction, being bound to act as they see fit, why do you have to say so much as relevant?

MR. WILSON: I suppose in a case --

THE CHAIRMAN: I mean that is what they do.

If you take an article which is impossible of having a proper specific duty fixed on it -- and suppose in one which is quite capable of it because there is a specific duty fixed for that, say, a dozen, or square feet or yards or inches, or weight it, but if you haven't such an article therefore you must have recourse to the general provision in Tariff, Item 'Convenient' which has nothing to do with relevant duty, but only in that case. That is what they must mean. Unless that is what you mean you had better not rely on that.

MR. WILSON: I have something in my mind but don't think I have been successful in expressing it properly.

THE CHAIRMAN: You had better get the rest of their report and see whether you can find some in it which varies this, because as you refer to it -

MR. [illegible]: That is another point.

THE CHAIRMAN: Well, I see point.

MR. WILSON: That is an illustration; if [illegible]

argument to make my argument clear. If there is an infinite variety of carpets ---

THE COMMISSIONER: Well, they would all be carpets. They would all have to be laid on the floor and measured though or you could weigh them.

MR. KELLOCK: ---an infinite variety requiring different protection then you would have to have a tremendous number of prices ---

THE COMMISSIONER: Suppose there were; is it any harder to have an infinite variety of prices per square foot than an infinite variety of rates of duty ad valorem?

MR. KELLOCK: They do not have an infinite variety.

THE COMMISSIONER: I thought you said you would have to have it.

MR. KELLOCK: What I am saying, if you are going to have a pure specific, as I understand their judgment, and without any ad valorem ---

THE COMMISSIONER: I say that regardless of the quality or anything else it is going to be 20% anyhow ad valorem that I have; although we can measure it and weigh it still we must say that everyone of these carpets is going to have 20% ad valorem. Why must you have the ad valorem?

MR. KELLOCK: As I understand it it is this, that to have a pure specific is impracticable in view of the tremendous number of items which you have to have different specific duties for owing to the complexity and the variety of the construction of the articles in the textile

schedule.

THE COMMISSIONER: I do not understand you. If you can follow that up by saying that to meet this infinite variety of complexities you should have a scale of infinite and various ad valorem duties then I can follow you, but you don't. You have a duty that is a blanket duty. It is 30%, or 20%. You have not met any infinite variety factor there. Why not fix your specific duty?

MR. KELLOCK: As a blanket item in the same way as a pure ad valorem? Well, I suppose if you do that ---

THE COMMISSIONER: I am not saying what is right or wrong. I am saying that is what they must mean here.

MR. KELLOCK: Isn't this what they also mean? Supposing you had a pure specific in the same group where you might have an ad valorem, you would have the same inequality or the same objection to a pure specific because you have not sufficiently related it to the individual items in the group, but if you have a combination of the two which enables you more to relate the intended protection to the variety of the individual items in the group - that is the way I understand it.

THE COMMISSIONER: Although the ad valorem rate of duty is the same on all items.

MR. KELLOCK: In that group.

THE COMMISSIONER: Well, we are talking of carpets.

MARSHALL.

THE COURT: I think I do not understand you. If you can follow that up by saying that to meet this infinite variety of complexities you should have a scale of infinite and various ad valorem duties then I can follow you, but you don't. You have a duty that is a blanket duty. It is 30%, or 40%. You have not met any infinite variety factor there. Why not fix your specific duty?

MR. MARSHALL: As a blanket item in the same way as a pure ad valorem? Well, I suppose if you do that ---

THE COURT: Well I am not saying what is right or wrong. I am saying that is what they must meet here.

MR. MARSHALL: Isn't this what they also meant? Supposing you had a pure specific in the same group where you might have an ad valorem, you would have the same inequality or the same objection to a pure specific because you have not sufficiently indexed it to the individual items in the group, but if you have a combination of the two which enables you more to relate the intended protection to the variety of the individual items in the group - that is the most I understand.

THE COURT: Although the difficulty of variety is the same ad valorem.

MR. KELLOCK: Taking the carpet item, or the carpet group, and I just add this, my lord, that is the way I understand the judgment, and that is, I would understand the reason why we find it only in the tariff schedule. Then I go on to point out that in the United Kingdom Tariff there are many illustrations of compound duties and I would submit it must be on the basis of experience for the same reason, that there are objections to a simple ad valorem or a simple specific by itself, but you get the advantage and avoid perhaps some of the disadvantages by combining the two.

THE COMMISSIONER: When was this report made?

MR. KELLOCK: That was made, my lord, in 1935, in March of 1935, my lord.

THE COMMISSIONER: Well, we will come back later.

-- The Commission adjourned for recess.

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MR. ADLOUR: Taking the output line, or the output curve, and I just ask this, my lord, that is the way I understand the judgment, and that is, I would urge from way we find it only in the tariff schedule. Then I go on to point out that in the United Kingdom tariff there are many illustrations of concurrent duties and I could submit it must be on the basis of exercise for the same reason, that there are objections to a single ad valorem or a single specific by itself, but you get the advantage and avoid perhaps some of the disadvantages by combining the two.

THE COMMISSIONER: Then was it in export duty?

MR. ADLOUR: Then was made, my lord, in 1938, in March of 1938, my lord.

THE COMMISSIONER: Yes, or this year last June.

-- The Commission adjourned for recess.

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-- On resuming at 2.30 p.m.

MR. KELLOCK: The conclusion of the Tariff board as I set it out in the factum was that"a compound duty such as those now imposed by the Canadian tariff upon many textile products may be regarded as a tenable compromise". I have got their reasons, my lord, and they are a little wider than I have in my factum, and they are not very long. Perhaps it would advance the matter if I just read them to your lordship.

MR. McRUER: Is this reference 83?

MR. KELLOCK: Reference 1. It is under the heading of "Effect of fluctuations on raw material prices".

THE COMMISSIONER: Where are you reading from?

MR. KELLOCK: From the reasons of the Tariff Board.

THE COMMISSIONER: Is that exhibit 640?

MR. McRUER: No, just a portion of a copy.

MR. KELLOCK: What is in 640 is in my factum. I have the complete text of this section here.

THE COMMISSIONER: 640 is just part of the same thing?

MR. KELLOCK: Yes.

THE COMMISSIONER: What are you reading from?

MR. KELLOCK: The report itself.

THE COMMISSIONER: And that is an exhibit?

MR. KELLOCK: No, my lord. I just borrowed this from the Tariff Board.

-- On resuming at 2.30 p.m.

MR. KENNEDY: The conclusion of the tariff board as I set it out in the factum was that the unusual advance now imposed by the American tariff on many textile products may be regarded as a transitory consequence". I have got their reasons my Lord, and they are a little wider than I have in my factum, and they are not very long. Perhaps it would advance the matter if I just read them to your Lordship.

MR. [illegible]: Is this reference 887?

MR. KENNEDY: Reference 1. It is under the heading of "effect of fluctuations on raw material prices".

THE COURT [illegible]: Where are you reading from?

MR. KENNEDY: From the reasons of the tariff board.

THE COURT [illegible]: Is that exhibit 6407

MR. [illegible]: Yes, just a portion of it.

MR. KENNEDY: What is in 6407 is in my factum. I have the complete text of this section here.

THE COURT [illegible]: 6407 is just part of the [illegible]

MR. [illegible]: Yes.

THE COURT [illegible]: What are you reading from?

MR. KENNEDY: The report itself.

THE COURT [illegible]: And that is on exhibit?

MR. KENNEDY: No, my Lord. I just borrowed it from the Tariff Board.

THE COMMISSIONER: What date is it?

MR. KELLOCK: 21st March 1935.

THE COMMISSIONER: All right.

MR. KELLOCK: "The effect of fluctuation in raw material prices on the incidence of ad valorem and specific duties. As the yield of an ad valorem duty in cents per pound of cloth changes with every change in prices due to fluctuating material values, it is manifest that a pure ad valorem duty sufficient to equalize conversion costs on a given date may become too high or too low for that purpose when a different raw material value has become reflected in prices".

Then they go on to say what I have in my factum: "The degree of protection provided by a pure ad valorem duty in an industry characterized by wide fluctuations in the price level of its raw materials is highly unstable".

THE COMMISSIONER: You need not read all that.

MR. KELLOCK: All right, My lord.

THE COMMISSIONER: The point is this. They say here, "The specific duty is the right thing." We have found from the examples given us of the effect of a very innocent specific duty, 3 cents a pound or so much a yard, with the same ad valorem duty as before, meant an increase of I don't know how much, 80 or 90 per cent, as the case may be. Now that is the board's reasoning.

MR. KELLOCK: This is the board's reasoning?

THE CHAIRMAN: What date is it?

MR. [illegible]: 21st March 1930.

THE CHAIRMAN: All right.

MR. [illegible]: "The effect of fluctuation in raw material prices on the incidence of ad valorem specific duties. As the yield of ad valorem duty in cents per pound of cloth changes with the every change in prices due to fluctuating material value, it is manifest that a purely ad valorem duty sufficient to equalize conversion costs on a given date may become too high or too low for that purpose when a different raw material value has become reflected in prices".

Then they go on to say what I have in my testimony: "The degree of protection provided by a pure ad valorem duty in an industry subject liable by wide fluctuations in the price level of its raw material is highly material".

THE CHAIRMAN: You need not read all that.

MR. [illegible]: All right, my lord.

THE CHAIRMAN: The point is this. They say here, "The specific duty is the right thing." We have found from the examples given us of the effect of a very innocent specific duty, 3 cents a pound or as much a yard, with the same ad valorem duty as before, meant an increase of I don't know how much, 50 or 60 per cent, as the case may be. Now that is the board recommending.

MR. [illegible]: This is the board's recommendation.

THE COMMISSIONER: That is the board's reasoning. Your ad valorem duty is there, don't touch it. But it is not accurate or fair, because when business is good prices go up, it takes too much from the consumer. You meet that by adding to his burden a specific duty as well. Now I do not see any sense to that. That has been the effect of it.

MR. KELLOCK: They do not take the same ad valorem.

THE COMMISSIONER: What ad valorem would you take? Do they make any specific recommendations?

MR. McRUER: In 1930 they increased the ad valorem and added a specific.

THE COMMISSIONER: Where a duty of 20 per cent is increased to 22½ per cent, and then 3 or 5 cents added specific added as an additional to the ad valorem, a small one, and a specific, you get a total increase of about 90 per cent. Is that what the board says is the proper way to correct a situation when the ad valorem duty runs you too high?

MR. KELLOCK: I am just trying to give you all I had set out in my brief, and to segregate the two.

THE COMMISSIONER: If they make specific recommendations you had better go straight to them. That would be the a concrete manifestation of their thought. If they have said any place, reduce your ad valorem from 20 to 10 and put the specific on, I would understand they are really trying to compromise, but if they say, leave your 20 where it is and add to it

Mr. [illegible]: That is the board's recommendation. Your ad valorem duty is there, for't tomorrow. But it is not concrete or fair, because your business is good without you say, it takes too much from the consumer. You meet that by adding to his burden a specific duty, as well. Now I do not see any sense to that. That has been the effect of it.

Mr. [illegible]: They do not take the same ad valorem.

The Chairman: Your ad valorem would give them? Do they make any specific recommendations?

Mr. [illegible]: In 1930 they increased the ad valorem and added a specific.

The Chairman: There a duty of 20 per cent is increased to 25% per cent, and then 5 or 3 cents added specific duties as an additional to the ad valorem, small one, and a specific, you get a total increase of about 30 per cent. Is that what the board says is the proper way to correct a situation when the ad valorem duty runs you too high?

Mr. [illegible]: I am just trying to give you all I have got out in my brief, and to separate the two.

The [illegible]: If they made specific recommendations as you had better go [illegible] to them. [illegible] would be a concrete manifestation of their thought. They have said any place, reduce your ad valorem 10 to 15 cent on the specific or, I would understand they are really trying to compromise, but if

I see no compromise, I see simply adding to the tariff burden.

MR. KELLOCK: This is what they say:

"To equalize the cost of a wide range of fabrics by means of a system of purely specific duties would necessitate the establishment of hundreds of purely specific duties, one for each different kind of cloth. The customs officials would have to identify each kind of cloth imported in order to ~~prescribe~~-impose on each cloth the prescribed specific duty. The obvious difficulties arising out of the administration of such a schedule would render it quite impracticable. As an illustration of the complexity inherent in a schedule of strictly specific rates, it has been computed that a scale of specific duties on worsteds yarn to allow for differences in count, colour, twist and methods of spinning, would require as many as 160 different rates."

And then they say that a compound duty of the two --

THE COMMISSIONER: Well, that is where I do not follow them at all. They wind up by saying bohh are wrong and fluctuate and have no solid foundation, -- the ad valorem, on account of what it produces in a rising market; and the specific, because there are no two the same. But you must have an average item, so they say, compromise that, have a flat figure of both. I have shown you what the effects of those

I can do concerned, I see clearly adding to the bill's

[illegible]

Mr. [illegible]: The Attorney may wish

to consider the need of a side cover of [illegible]

by means of a system of purely commercial advertising

would necessitate the establishment of [illegible]

of clearly [illegible] outlets, one for each [illegible]

kind of cloth. The [illegible] would have

to identify each kind of cloth [illegible] in order

to [illegible]-tipped on each cloth the [illegible]

[illegible] day. The obvious difficulties [illegible]

out of the [illegible] of such a [illegible]

render it quite impracticable. [illegible] illustra-

tion of the complicity involved in [illegible] of

actually [illegible] fibres, it has been [illegible]

that a [illegible] of specific duties on [illegible]

to allow for differences in [illegible], [illegible]

and methods of [illegible], which [illegible]

a lot different [illegible].

and then they say that a [illegible] duty of the [illegible]

The [illegible]: [illegible], that is where I do

not follow them at all. They [illegible] up [illegible]

are wrong and [illegible] and have no [illegible]

-- [illegible] a [illegible], on account of [illegible]

[illegible] on two [illegible]. But you must have [illegible]

[illegible], so they say, [illegible] [illegible]

of [illegible]. I have shown you what the effect of [illegible]

compromises have been.

MR. KELLOCK: What they do say, and what I would submit and agree with, is that a purely specific duty is the proper thing, for want of a better word, but apparently from their experience, they say, from the multiplicity of differences in such a thing as textiles, one thing, you take the English of it and you say --

THE COMMISSIONER: I quite understand that. You need not repeat it. They say, to have the specific alone you must have a different specific for each article and then you get into this multitude, which would not do. Likewise they say if you have the ad valorem alone that is wrong too, because when the market goes up it becomes onerous. Therefore, they say, have both.

MR. KELLOCK: They do not say the specific is wrong.

THE COMMISSIONER: I know they don't. They say, have both. I understand the argument; that is what they say? Is that what you are adopting?

MR. KELLOCK: Yes my lord. There is just one other thing I want to submit to your lordship, but it has gone from me.

THE COMMISSIONER: Well, it may come back.

MR. McRUER: It was not dealt with yesterday, was it?

MR. KELLOCK: Perhaps what I had in mind -- I am not so sure, in fact I think it was something else --

commercial use have been.

Mr. [illegible]: What they do say, is what I would submit and agree with, is that a particular specific duty is the proper thing, for work of a certain sort, not generally from their experience, they say, from the multiplicity of duty reasons in such a thing as [illegible], and [illegible] you get the [illegible] of it as you say --

Mr. [illegible]: I quite understand that. You need not repeat it. They say, to have the specific clause you must have a different specific for each article and then you get into this [illegible], which would not do. Likewise they say if you have the valuation clause that is wrong too, because then the [illegible] has to [illegible] everything. Therefore, that is, [illegible].

Mr. [illegible]: They do not say the specific is wrong.

Mr. [illegible]: I know they don't. They say, have both. I understand the argument; that is what [illegible] say. [illegible]

[illegible]

[illegible] has gone from me.

Mr. [illegible]: [illegible] is my case [illegible].

Mr. [illegible]: It was not done with [illegible], was it?

[illegible]: Perhaps what I had in mind -- I am so sure, in fact I think it was somewhere else --

was this, that an ad valorem duty, although the board do not point out here the advantage of a pure ad valorem duty, does have the advantage, an advantage they do not mention, but it also has a disadvantage. They say a specific duty would be the ideal thing, but they say the trouble with a purely specific tariff schedule --

THE COMMISSIONER: They do not leave much room for any advantage in ad valorem duty, by the language they use.

MR. KELLOCK: They do not mention it at all.

THE COMMISSIONER: They absolutely damn it. They say "The degree of protection provided by a pure ad valorem duty in an industry characterized by wide fluctuations in the price levels of its raw materials is highly unstable". And they are talking of textiles. They do not say a good word for it.

MR. KELLOCK: I know they don't.

THE COMMISSIONER: I thought you said they did.

MR. KELLOCK: No, I said they do not mention the advantage of an ad valorem rate.

THE COMMISSIONER: Because they specifically rule it out. They do not say it has any advantages. They say that applied to the textile industry it is disadvantageous; that is what they say, in an industry, as they describe the textile industry, "characterized by wide flurtuations in the price levels of its raw materials" an ad valorem duty is highly unstable. I am not debarring you from arguing, but you cannot

was this, that an ad valorem duty, although the Board did not point out here the advantage of a pure ad valorem duty, does have the advantage, on occasions they do not mention, but it does see a disadvantage. They say a specific duty would be the least thing, but they say the Board will [illegible] properly [illegible]

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THE COMMISSIONER: They do not leave much room for any advantage in ad valorem duty, by the language they use.

MR. [illegible]: They do not mention it at all.

THE COMMISSIONER: They absolutely leave it. They say "the degree of protection provided by a pure ad valorem duty is an industry characterized by wide fluctuations in the price levels of its raw materials in [illegible] markets". And they are speaking of textiles. They do not say a good word for it.

MR. [illegible]: I know they don't.

MR. [illegible]: No, I mean they do not mention the advantage of an ad valorem duty.

MR. [illegible]: Because they would [illegible] rule it out. They do not put it that way exactly. They say that applied to the textile industry it is disadvantageous; that is what they say, in my view as they describe the textile industry, characterized by wide fluctuations in the price levels of its raw materials, or as raising [illegible] industry.

I do not remember just from memory, but you [illegible]

use their argument.

MR. KELLOCK: I was just going to say, apart from what the Tariff Board has said --

THE COMMISSIONER: Well, you are on better ground.

MR. KELLOCK: I was going to submit that the advantage of an ad valorem rate by itself is this, -- and for my own assistance I always like to take an illustration. Take a coarse carpet; there is very little labour in it; a 10 per cent. rate on that ad valorem is equal to ten cents specific per dollar. You have got just one item in the tariff under the heading of carpets. If you have a carpet that is worth ten dollars for the same unit of measurement you would certainly have to have a different specific duty, because ten cents on a cheap thing would form an entirely inadequate protection on a dearer article. But if you have a 10 per cent. ad valorem rate on both, that gives you 10 per cent. protection on the first, which, on the same date that you are dealing with for both, is adequate for that, and a ten per cent. of the ten dollar article gives you a dollar on that, which is adequate for that. So the ad valorem method has the virtue or advantage of giving at any one time across the schedule the proper protection having regard to the degree of fabrication of the article. That is the advantage of it. But the disadvantage of it is that when you change the date and your raw

their argument.

MR. KELLOGG: I was just going to say, apart from what the Tariff Board has said --

[illegible] grounds.

MR. KELLOGG: I was going to submit that the advantage of an ad valorem rate by itself in this, -- and for my own satisfaction I always like to take an illustration. Take a carpet; there is very little labour in it; a 10 per cent. rate on that ad valorem is equal to ten cents specific per dollar. You have got just one item in the tariff under the head ing of carpets. If you have a carpet that is worth ten dollars for the same unit of measurement you would certainly have to have a different specific duty, because ten cents on a cheap thing would form as [illegible] But if you have a 10 per cent. ad valorem rate on both, that gives you 10 per cent. protection on the first, which, on the same date that you are dealing with the [illegible] that, while [illegible] method has the virtue [illegible] one time secures the maximum protection [illegible] that is the advantage of it. [illegible]

material goes either up or down and becomes reflected in prices, it gets at an opposite result. So that they say, in order to go through the whole tariff schedule and fix a proper specific tariff on each of these multitudinous items, you cannot do it, but if you take the same ad valorem rate you get the advantage of that, whatever it may be; you take the specific duty and tie it to that, and then you apply them both as a single thing to the one unit which governs a number of these varieties. You get some of the advantages of both and you avoid the disadvantages.

THE COMMISSIONER: We have seen, by the examples given me, what you do get. You get a very great increase in the tariff; that is the net result of it.

MR. KELLOCK: Is that what your lordship has in mind? That if you start off with an ad valorem rate and you increase the ad valorem rate, if you like, and add a specific rate to it, then you do get of course largely increased protection. But does it not all depend upon the time at which you are fixing the rate, whether it is ad valorem or specific, the protection that you want to give to the article?

THE COMMISSIONER: Well, of course, the time is every year, I suppose you might say.

MR. KELLOCK: It may well be. And when I am arguing for the compound I am not necessarily of course, your lordship understands, asking that in the case now where there are only ad valorem

musical pose either up or down and bounce rotations in prices, it gets at an economic result. In that they may, in order to go through the whole term of economics and fix a number specific tariff on each of these multitudinous items, you cannot do it, but if you take the same of a volume rate you get the advantage of that, however it may be; you take the specific duty on the tariff and then you can by the one unit which covers a number of these articles. The jack rate of the economists of both and you would be discouraged.

[illegible]: I have said, by the course given me, when I go out. [illegible] a very great increase in the tariff; that is the net result of it.

[illegible]: Is that what you [illegible] to mean? That if you start off with an ad valorem rate and you increase the ad valorem rate, if you like, and add a specific rate to it, then you do not of course [illegible] increase in [illegible] it does all depend upon [illegible] fixing the rate, whether [illegible] the protection that you want to give to the [illegible]

[illegible]: I think, [illegible] in every case, I [illegible]

[illegible]: [illegible] and when I [illegible] for the [illegible] of [illegible]

[illegible]

rates my protection be immediately increased by putting on some specific. I am only arguing, my lord, that at the time when whoever the authority is that is settling what the protection ought to be, at that time the best way to fix protection which will last for a time without these inequalities is by using the compound rate. And I submit in support of that that that has been what we have done and that is what other countries have done, because, as I say at the foot of page 13:

> " There are many examples of compound duties and in the Customs Excise Tariff of the United Kingdom which demonstrate that the British government considers duties of this nature necessary. (It will be noted that about half the tariff items in the United Kingdom Customs Tariff provides specific duties).

My conclusion, on the following page, my lord, is that --

> "The effect of the whole series of items and duty rates and not individual items or particular examples must be considered. It should be noted that under any possible scale of duties --

I am repeating this, but it is important.

> "-- some articles will receive more protection than others and some less than others, giving the Canadian manufacturer an advantage in some

raises my protection to inadvertently increased by relying on some specific. I am only saying, my lord, that at the time when Moscow the sole only is that is settling what the protection ought to be, at that time the best way to fix protection which will last for a time without those inequalities is by using the compound rate. And I submit in support of that that that was what was fixed by the Act. Some 144 years ago, conditions have gone, however, as I say at the last of page 18:

" There are many varieties of measured duties in the customs tariff of the United Kingdom which incontrovertibly that the protection measurement consists during of the return measure. (It will be noted that about half the tariff items in the United Kingdom customs tariff provides specific duties).

My noble lords, on the following page, on line, he says --

"The effect of the whole series of ad valorem duty rates and not relatively I have a protection under compulsion as it is measurement. It does not be noted that means the possible use is of duties --

I am [illegible] this, but it is interesting.

-- page 19 line 1 (I wonder how [illegible] than other one less than other, getting the [illegible] a duty counter in advantage in each

"cases and the importer advantages in other cases. Evaluting the present woollen and knitting tariff schedule as a whole, it will be noted that in 1935 about one fifth of everything Canada imports from Great Britain are goods sold in competition with this Canadian industry or raw materials for its further manufacture. It might here be noted that Canada has given British goods a preference over foreign goods for some forty years, and that the Imperial Conference at Ottawa was for the purpose of promoting Inter Empire Trade".

I then come to:

"Silk and Artificial Silk Duties.

Figures showing the rapid growth of the silk and artificial silk industry in Canada have already been given; from employing 824 people in 1917 to employing 10,888 people in 1935. It might be noted that employment given by custom dyers servicing this industry is not included in these figures, nor the employment given in cotton mills in weaving artificial silk.

While certain lines of products made from the different textile fibres compete with each other for consumer demand this competition is probably closest between silk and artificial silk. Artificial silk yarn is used in the knitting industry, the cotton industry, the broad

"Canada and the import advantages in other
cases. Protection has proved conducive
building tariff schedules as above, it will be
noted that in 1928 about one fifth of everything
Canada imports from Great Britain was used
in competition with this country's industry or
raw materials for its further manufacture. It
might here be noted that Canada has given British
goods a preference over foreign goods for some
forty years, and that the Imperial Conference
at Ottawa was for the purpose of promoting
Inter-Empire Trade".

I then come to:

"Silk and Artificial Silk Yarns.

Figures showing the rapid growth of the silk
and artificial silk industry in Canada from al-
most zero, given; from employing 8,4 people in
1917 to employing 10,000 people in 1928. It
might be noted that employment given by certain
firms supplying this industry is not included
in these figures, nor the employment given in
[illegible] in [illegible] silk.

While certain lines of products come from
the different textile firms concerned with such
[illegible] for [illegible] this competition is
practically absent between silk and artificial
silk. Artificial silk yarn is used in the
knitting industry, the cotton industry, the [illegible]

"silk industry and in the production of threads, ribbons and so on.

Artificial Silk: Artificial silk is a comparatively new fibre, and there is no mention of it in the Canadian Customs Tariff until the year 1923. The formulating of tariff items on this product has been a matter of evolution, and it is possible that some special provision might be made for fabrics of artificial silk and cotton mixed, althoug it should be noted that these mixed fabrics have become relatively less important as the development of the use of artificial silk has proceeded. (Exhibit 807).

Duties on artificial silk yarns were placed in the Canadian tariff on the establishment of a plant in Canada to produce them. With regard to unprocessed or unthrown yarns, the duty rate on such yarns is itself some measure of the protection afforded by the tariff to the manufacturer of such yarns. On the other hand the protection afforded to the throwster, weaver, and dyer and finisher depends on the spread Between the duty rate on the unprocessed or unthrown yarn and the duty rates on the further manufactured or finished products. A statement of the duties on artificial silk fabrics or other goods without regard to the duties on yarns does not reflect the

"silk industry and in the production of yarns, fabrics and so on.

Artificial silk: Artificial silk is a comparatively new fibre, and there is no mention of it in the Canadian Customs Tariff until the year 1924. The manufacture of textile fibres on this continent has been a matter of evolution, and it is recognized that some special provision might be made for fabrics of artificial silk and cotton mixed, although it should be noted that these mixed fabrics have become relatively less important as the development of the use of artificial silk has progressed.

(Exhibit 80).

Duties on artificial silk yarns and piece in the Canadian Tariff on the establishment of a plant in Canada to produce them. With regard to unprocessed or undrawn yarns, the duty made on such yarns is identic same as of the protect on offered by the world to the same manner of such yarns. In the only that the protection afforded to the Canadian manufacturer, and later and finished products on the raised between the duty rate on the unprocessed or undrawn yarns and the duty rate on the further drawn or finished products. or between of the duties on artificial silk fabrics or other goods without regard to the duties on yarns does not reflect the

"protection afforded by the rates."

THE COMMISSIONER: Have there been any changes in those rates?

MR. KELLOCK: Yes, my lord. The old rate on artificial silk was 30 per cent. Item 561.

MR. McRUER: This is on woven fabrics.

MR. HOOPER: We are talking about yarns. 561 is not right.

MR. McRUER: 561 deals with woven fabrics.

MR. KELLOCK: I am not talking about yarns only. I am talking about yarns and fabrics. Item 561:

"Woven fabrics wholly or in part of artificial silk or similar synthetic fibres produced by chemical processes, not to contain wool, not including fabrics in chief part by weight of silk, n.o.p."

It really means artificial silk and mixture fabrics. The old rate was 30 per cent and the new rate is 27½ per cent. I should add to that, my lord, that taken out of 561 and also taken out of 523 e is a new item of fabrics with cut weft pile.

THE COMMISSIONER: How is it numbered?

MR. KELLOCK: It is numbered ex 523e and ex 561.

MR. McRUER: And what is the new number given to it?

MR. KELLOCK: The new number is 524a, and the description is, "Fabrics with cut weft pile

"protection afforded by the patent."

THE COURT: Is it there, be in my own

in those words?

MR. [illegible]: Yes, my lord. The old [illegible]

[illegible] in the past [illegible]. I can [illegible].

MR. [illegible]: This is on seven [illegible].

MR. [illegible]: We are [illegible] about [illegible]

[illegible] is not right.

MR. [illegible]: [illegible] would [illegible] [illegible].

MR. [illegible]: I am not [illegible] about [illegible]

[illegible]. I am talking about [illegible] [illegible]. I [illegible]

[illegible]:

"Woven fabrics wholly or in part of artificial silk or similar synthetic fibres produced by chemical processes, and to articles made, wholly or in part, from such fabrics in other ways by weight of silk, n.o.p."

It really means merely that silk and rich[illegible] fabrics. The old [illegible] was 30 per cent and the new one is 27½ per cent. I [illegible] to that, my lord, that [illegible] out of 301 are also [illegible] of 301 [illegible] is a new item of fabrics with [illegible] pile.

THE [illegible]: How is it measured?

MR. [illegible]: It is measured ex [illegible] and [illegible].

MR. [illegible]: And what is the new number given [illegible]?

MR. [illegible]: The new number is 304, and the [illegible] is. "Articles with cut [illegible] pile

"wholly of cotton or of cotton and artificial silk". I am instructed it is really velvateens and corduroys. The new rate is 5 per cent, and the old rate was 15 per cent and 30 percent, depending upon whether it was cotton or artificial silk.

MR. McRUER: Are these made in Canada?

MR. KELLOCK: No, they are not made in Canada.

THE COMMISSIONER: Are these the only changes?

MR. KELLOCK: Yes, my lord, they are the only changes. That is on artificial silk alone. I am coming to silk.

THE COMMISSIONER: Yes, we are talking about that. There are no changes in the yarns?

MR. KELLOCK: I understood there was nothing else. That is all of that my lord. So my lord, when you are dealing with an article such as an unprocessed or unthrown yarn, a statement of the duty rate on it is all that you need to consider when you are considering the available protection. But when you are dealing with an article fabricated from these unprocessed or unthrown yarns, merely to say what the duty rate is applicable to the manufactured product is not sufficient, because the protection afforded to the mamufactured product is the spread between the rate on that product and the rate on the yarn.

THE COMMISSIONER: What do you say? Are you back to your specific duty?

MR. KELLOCK: I say that when you are considering what is the protection on an unprocessed or an unthrown yarn, a simple statement of the duty rate applicable is the protection available at the moment. But a simple statement of the duty applicable on a fabric made from that unprocessed or unthrown yarn is not equal to a statement of the protection on the fabric. It is the spread between the rate existing on the yarn and the rate on the fabric which gives the protection to the finished fabric.

MR. McRUER: Is that quite right?

THE COMMISSIONER: Why do you say that? The raw material in the world's market is there forall manufacturers, -- this country and competing countries. If the raw material price goes up it affects your competitor as well as yourself. If it goes down you are none the worse off; it has gone down for you as well as for your competitors.

MR. KELLOCK: I am not speaking of my competitor. My point is this, that if I, the manufacturer of fabrics, have a rate of 15 per cent --

THE COMMISSIONER: On what?

MR. KELLOCK: ON my fabrics, and there is no duty rate on my raw material --

THE COMMISSIONER: You are getting it in free?

MR. KELLOCK: I am getting it in free, then 15 per cent is my protection. But if there is a duty rate on the yarn and I have to import and pay that duty rate, or if I have to buy domestically from an

Mr. [illegible]: I say that when you begin to count a duty in the protection on unprocessed or on semi-processed, a single statement of the duty rate applicable the protection available at the moment. But a single statement of the duty available on a fabric made from that unprocessed or semi-processed yarn is not equal to a statement of the protection on the fabric. It is the spread between the two statements, on the yarn and the rate on the fabric which gives the protection to the finished fabric.

[illegible]

The [illegible]: Why do you say that? The raw material in the world's markets is there for all manufacturers, -- this country and competing countries. If the raw material price goes up it affects your competitor as well as yourself. If it goes down you are more the worse off; it has come down for you as well as for your competitors.

Mr. [illegible]: I am not speaking of my competitor. My point is this; that if I, the [illegible] of fabrics, have a rate of 15 per cent --

The [illegible]: On what?

Mr. [illegible]: On my fabrics, on which there is no duty rate on my raw material --

The [illegible]: You are making it in Canada?

Mr. [illegible]: I am making it in Canada, then 15 per cent is my protection. But if there is a duty rate on the yarn and I have to import and pay that duty rate, or if I have to buy domestically from a

industry which needs that duty rate to exist in Canada, then my protection is only the difference between the two rates, -- my particular protection.

MR. McRUER: No. That would not work out that way.

THE COMMISSIONER: Many, many things come in to effect there. Does your competitor get his raw material free of duty?

MR. KELLOCK: You mean my domestic competitor?

THE COMMISSIONER: You are speaking of protection. Protection must always mean against an outside competitor.

MR. KELLOCK: Outside the country?

THE COMMISSIONER: How do your know your competitor is not paying duty on his raw material?

MR. KELLOCK: I cannot know that.

THE COMMISSIONER: Until you can say that, until you know that, you cannot say whether or not your protection is being reduced by the fact that you are paying a duty on your raw material. Perhaps he is, too.

MR. KELLOCK: That may be so, but my idea is this. For instance, we are talking about artificial silk and I compare myself to a manufacturer in Italy, where there is an artificial silk yarn industry: then the manufacturer in Italy gets his yarn there.

THE COMMISSIONER: Unless there is an excise

necessary which means that duty must be paid in Canada, then my protection is only the difference between the two rates, -- my particular protection.

MR. MEIGHEN: No. That would not work out fairly.

THE CHAIRMAN: Many, many things come in to effect there. Does your complaint get his raw material free of duty?

MR. KILLICK: You mean my domestic competitor?

THE CHAIRMAN: You are speaking of protection. Protection must always mean duty imposed on outside competition.

MR. KILLICK: Outside the country?

THE CHAIRMAN: How do you know your competitor is not paying duty on his raw material?

MR. KILLICK: I cannot know that.

THE CHAIRMAN: Until you can say that, until you know that, you cannot say whether or not your protection is being reduced by the fact that you are paying a duty on your raw material. Perhaps he is, too.

MR. [illegible]: [illegible] rule. The [illegible] with [illegible] when the manufacturers in Italy get his yarn there.

THE CHAIRMAN: Unless there is an equal

on it in Italy.

MR. KELLOCK: Unless there is excise, of course.

THE COMMISSIONER: I suppose there is.

MR. KELLOCK: There may be. I do not know.

THE COMMISSIONER: You see, you get back to too many factors that you cannot take for granted; you have got to go into them. You cannot say, my protection, which means protection against such a competitor, is reduced by so much; you do not know that. To know that you must first find out your competitor's situation.

MR. KELLOCK: I am satisfied with this statement of it, putting it conversely, that it is not true to say, if my duty rate on my fabric is 15 per cent, that that is necessarily co-equal to my protection, unless you take into consideration these other things.

MR. McRUER: I think my friend is under a misunderstanding there. If there is 15 per cent both on yarn and on fabric, we will say that on a pound of yarn it is 50 cents. He makes that yarn. Fifteen per cent on 50 cents would be 7½ cents. Then it is fabric and it is worth a dollar, and his protection on it is 15 per cent; that is 15 cents on a pound of fabric, and the yarn has gone into it and it has been increased in value and he has the greater protection.

MR. KELLOCK: That is exactly what I am saying.

on is in Italy.

Mr. [illegible]: Unless there is cause, of course [illegible]

Mr. [illegible]: There may be. I do not know.

Mr. [illegible]: Yes sir, you have to [illegible] many matters that you, counsel have [illegible]; you have got to go into them. You cannot say, my proposition, which seems protection and as much a contradictor, is reduced by so much; you do not know that. To know that you must first find out your correlative situation.

Mr. [illegible]: I am satisfied with that statement of it, putting it concisely, that it is not true to say, if my duty runs on my [illegible] is in question, that what is necessarily connected to my protection, makes you take into consideration these other things.

Mr. [illegible]: I think my friend is under a misunderstanding. If there is no cost both on yours and on theirs, we will say that on a pound of yarn it is 10 cents. He makes the yarn. Between our cost on 50 cents and 10 cents. Then it is fabric and it is worth a dollar, and his protection on it is 15 per cent; yes, it is cents on a pound of fabric, and the yarn has gone into it and it has been incorporated in value and is by the former protection.

Mr. [illegible]: [illegible]

MR. M cRUER: No, you said it was the difference between the spread.

MR. KELLOCK: That is exactly what I am saying, the 15 cents on the fabric, if you get down to the specific, which is actual protection.

THE COMMISSIONER: Are you not going too far? Are you not saying that if you have to pay duty on your machinery you men are having your protection reduced; anything that comes into your expense would be reducing your protection. Are not all these things taken into consideration by parliament in fixing your protection?

MR. KELLOCK: I think they are.

THE COMMISSIONER: Why single out one? That is the duty you pay on your raw materials. You can have other sorts of duty, and largely those things are part of your case when you come and ask for protection; you get protection under those conditions and you say, " Now we are sufficiently protected". You said that in 1930, for instance. Now that is fine.

MR. KELLOCK: Perhaps I am not making myself clear. My friend in his brief has a whole line of cases where he takes the fabric and says the duty is so much and the protection is so much. I say you cannot take that absolutely unless you consider other facts, one of which is the duty I pay on my raw material.

THE COMMISSIONER: They have all been

MR. R. COLDWELL: No, you will be the difference between the spread.

MR. [illegible]: That is exactly what I am [illegible] the 15 cents on the fourth, if you will come to the specific, which is second proposition.

MR. [illegible]: Are you not going too far in you not saying that if you have to pay duty on your wool there you are hurting your protection [illegible]; anything that comes i to your expense to [illegible] reducing your protection. Are not all those things to encourage production by partiment in fixing your protection?

MR. [illegible]: I think they are.

THE CHAIRMAN: Why should one only [illegible] is the duty you pay on your own manufacture. You have other sorts of duty, and for why there [illegible] part of your case when you come and ask for protection; you get protection under those conditions and you [illegible]. Now we are asked only protected. You and [illegible] in 1890, for instance. Now that is fair.

MR. [illegible]: Perhaps I am [illegible] clear. My friend in his brief has a whole line [illegible] cases where he takes the fourth and says the duty is [illegible] and the [illegible] is [illegible]. I may [illegible] cannot take that seriously unless you consider [illegible] [illegible] I [illegible] [illegible] [illegible].

[illegible]

considered in fixing whatever it is, 20 or 30 per cent.

MR. KELLOCK: Presumably so.

THE COMMISSIONER: Well, undoubtedly so.

MR. KELLOCK: I am directing this argument towards my friend's presentation, because he only puts the one side of it, that is the rate prevailing on the fabrics, and he does not consider at all the expense I am under in producing that fabric. Now, my lord, I go on to Yarns and Fabrics.

MR. McRUER: If my friend is presenting a case against duties on yarns, I am all with him.

MR. KELLOCK: I must have a terrible time expressing myself if I ever suggested that.

"Yarns and Fabrics: Exhibit 807 gives the history of rates of duties on both yarns and fabrics of artificial silk."

THE COMMISSIONER: What do you say about duties on yarns? You are not in favour of free entry of yarns?

MR. KELLOCK: I do not think I am in a position to do that.

THE COMMISSIONER: You are not advocating that?

MR. KELLOCK: No, I am not advocating it.

THE COMMISSIONER: You are in favour of the free entry of raw silk and raw cotton and things of that sort?

considered in fixing whatever it is, 40 or 50 per cent.

[illegible]

THE CO-INQUIRY : [illegible], undoubtedly so.

MR. BRODY : I am directing this argument towards my friends prosecution, because he only gives the one side of it, that is the more prevailing on facts, and he does not consider at all the extent I am under in producing that facts. Now, my lord I go on to Texas and Florida.

MR. [illegible] : If my friend is presenting a case against the time of years, I would like him.

MR. [illegible] : I must have a reasonable time expressing myself if I was suggested that.

[illegible] : Subject MOV given the history of rates of duties on both yarns and fabrics of artificial silk.

THE CO-INQUIRY : What do you say about duties overall? You are not in favour of free entry of yarns.

MR. [illegible] : I do not think I am in a position to do that.

THE CO-INQUIRY : You are not advocating that?

MR. [illegible] : No, I am not advocating it.

THE CO-INQUIRY : You are in favour of the

MR. KELLOCK: I suppose so. I suppose so. I am not getting it though, my lord.

THE COMMISSIONER: You are in favour of taking the excise off?

MR. KELLOCK: I am not getting it. I see no signs of getting it, so perhaps that is academic, unless your lordship gives me some relief.

"Exhibit 807 gives the history of rates of duties on both yarns and fabrics of artificial silk. As appears from this exhibit the rates of duties were increased in 1930. Since that time, these duties have been reviewed by the Tariff Board in the years 1934, 1935 and 1936 and as a result of the findings of the board there have been two reductions in the preferential yarn duties and a reduction in May 1936 in the British Preferential duties on fabrics which has had the effect of increasing imports from Great Britain."

So I submit again, my lord, my friend has submitted no evidence to your lordship to suggest why there should be a reduction, if the relative costs of production as between the two countries is the same, -- as to why there should be a further reduction; and that situation is aggravated by the reduction which was put in effect yesterday in the case of fabrics.

"The Tariff Board hearing on fabrics, and the rate arrived at by the Tariff Board, and implemented in the budget of 1936, was under

Mr. [illegible]: I answer no. I suppose so. I don't notice it though, my lord.

Mr. [illegible]: You are in favour of [illegible] the excise duty?

Mr. [illegible]: I am not noticing it. I am no judge of noticing it, so perhaps that is accurate, unless your Lordship gives me some relief.

"Exhibit 807 gives the history of rates of duties on both yarns and fabrics of artificial silk. As a matter from this exhibit the rates of duties were increased in 1926. Since that time, these duties have been reviewed by the Tariff Board in the years 1927, 1928 and 1930 and as a result of the findings of the Board there have been two cuts in the protectorate yarn duties and a complete in May 1927 in the artificial textile fabrics duties on fabrics which has had the effect of increasing imports from Great Britain."

So I submit my lord, my Lord, my friend has submitted no evidence to your Lordship to support why there should be a reduction, if the relative cost of production between the two countries is the same, -- and to say there should be a further reduction; one that either is recovered by the reductions which are put in effect yesterday in the case of fabrics.

"The tariff board hearing on fabrics, and the rate received at by the Board of Trade, and implemented in the budget of 1930, was under

"article 11 of the Ottawa agreement, and the present British Preferential rate is 30 per cent less 10, or 27 per cent net. In the case of imports from Japan the protection has been substantially reduced by reason of the abolition of the fixed valuation of $1.25 per pound in the case of fabrics and the successive reduction in the proclaimed value of the yen which affects the amount of both the ordinary duties and the currency dumping duty.

As a result of the increase in the rates of duties in 1930, the imports of both yarns and fabrics of artificial silk were reduced, but since the 1st of January 1933, these importations have increased. The increase in the rates which took place in 1930 did not have the effect of excluding imports of either yarns or fabrics. Any suggestion that the existing spread between the British Preferential rates and the intermediate rates is excessive is negatived by the fact that imports are now and have been in the past made in substantial quantities under the intermediate tariff although necessarily the intention and effect of the revisions made during recent years have been to divert a substantial proportion of importations to British sources. The sources of artificial silk imports during recent years have been:"

This is in percentages, my lord, as between the United Kingdom and other countries.

"article 11 of the Ottawa agreement, and the preferential British preferential rate is 30 per cent less 10, or 27 per cent net. In the case of imports from Japan the protection has been substantially reduced by reason of the condition of the fixed valuation of 11.88 per pound in the case of fabrics and the successive reduction in the preferential rate of the year which affects the amount of both the ordinary duties and the currency duties.

As a result of the increase in the rates of duties in 1930, the imports of both yarns and fabrics of artificial silk were reduced, but since the 1st of January 1932, these importations have increased. The increase in the rates which took place in 1930 did not have the effect of an immediate reduction of either yarns or fabrics. My question then, the existing spread between the British Preferential rates and the intermediate rates is excessive is answered by the fact that imports are now and have been in the past mainly in substantial quantities under the intermediate tariff although necessarily the intention and effect of the intermediate tariff seems to have been to divert a substantial proportion of imports to British channels. The rates of duty of artificial silk imports during recent years have been:"

[illegible] Then, as between the British and other countries,

	Yarn		Fabric	
	U.K.	Other	U.K.	Other
1930	5.4	94.6	43.0	57.0
1931	37.7	62.3	42.5	57.5
1932	11.3	88.7	65.3	34.7
1933	19.4	80.6	72.6	27.4
1934	33.6	66.4	51.3	48.7
1935	58.0	42.p	64.1	35.9

My lord, as regards the last two years the figures are simply reversed.

MR. McRUER: That makes a big difference to the confusion you draw afterwards.

MR. KELLOCK: The lines are transposed. The figure that is opposite 1934 should be opposite 1935. In other words, the 1934 result is that 64.1 per cent is from the United Kingdom and 35.9 from other countries, and in 1935 51.3 per cent is from the United Kingdom and 48.7 from other countries.

THE COMMISSIONER: Well now, you show by that table, do you not, that the swing of importations has been from other countries to the United Kingdom?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: You are not complaining of that, are you?

MR. KELLOCK: No, my lord.

MR. McRUER: When I discussed this matter I was pointing out that the table of percentages could not be taken as indicating anything very much unless

	Years		Months	
	L.A.	Other	T.U.	Other
1930	5.4	94.6	42.0	57.0
1931	37.7	62.3	42.4	57.5
1932	11.3	88.7	65.3	34.7
1933	19.4	80.6	72.6	27.4
1934	[illegible]	[illegible]	[illegible]	[illegible]
1935	38.0	62.0	64.1	35.9

MY lord, as regards the last two years the figures o[illegible] simply reversed.

MR. MONK K: That makes a big difference to the conclusion you draw afterwards.

MR. MONK K: The lines are transposed. The figure that is opposite 1934 should be opposite 1935. In other words, the 1934 result is that 64.1 per cent is from the United Kingdom and 35.9 from other countries, and in 1935 21.5 per cent is from the United Kingdom and 62.7 from other countries.

THE COMMISSIONER: Will not, you show by this table, do you not, that the swing of immigrations has been from other countries to the United Kingdom?

MR. HALDANE: Yes, my lord.

THE COMMISSIONER: You are not contending o[illegible] that, you know?

MR. HALDANE: No, my lord.

THE COMMISSIONER: That I suppose will satisfy [illegible] the practical one that the bulk of immigrants [illegible] are living as Canadians [illegible]

we studied the quantities actually imported.

MR. KELLOCK: I propose to do that.

MR. McRUER: Just excuse me a moment. Your Lordship suggested that we should have a table prepared showing these quantities, and Mr. Hooper has done that, and I have it now available, so that probably my friend would like to have it.

MR. KELLOCK: I have done it as well. Perhaps you have got the same results as I have.

MR. McRUER: Well, we have it very nicely done.

THE COMMISSIONER: We will make it an exhibit.

MR. McRUER: Yes, my lord. The value of imports into Canada for the calendar years 1928 to 1936, fabrics in whole or in part of artificial silk.

MR. KELLOCK: That is, both knitted and woven?

MR. McRUER: Yes.

THE COMMISSIONER: That will be 1347.

EXHIBIT No.1347: Tabulation of value of imports to Canada 1928-36 of fabrics in whole or part of artificial silk.

MR. KELLOCK: There are three items in the tariff. Do your figures include the imports in three items?

MR. HOOPER: Yes, Mr. Kellock.

MR. McRUER: Then the next one is the value and weight of woven fabrics wholly or in part of artificial silk.

THE COMMISSIONER: The first is just the value?

MR. KNOX: I propose to do that.

MR. [illegible]: Just assume for a moment. The Lordship suggested that we should have a table showing these quantities, and Mr. So-and-so has got that and I have it now available, so that probably my friend would like to have it.

MR. KNOX: I have done it as well. Perhaps you have not the same results as I have.

MR. [illegible]: We have it very [illegible].

THE CONSTABLE: We will make it an exhibit.

MR. KNOX: Yes, my Lord. The value of imports into Canada for the calendar years 1913 to 1926, duties in whole or in part of manufactured silk.

MR. [illegible]: That is, [illegible] and woven.

MR. KNOX: Yes.

THE CONSTABLE: That will be 1047.

EXHIBIT NO. 1047: Tabulation of value of imports by [illegible] of duties in whole or in part of manufactured silk.

MR. KNOX: There are three items in the tariff. Do your figures include the imports in these items?

MR. [illegible]: Yes, Mr. Knox.

MR. KNOX: Taking the year 1926 in the value and weight of woven fabrics wholly or in part of manufactured silk.

MR. [illegible]: The [illegible] is [illegible]

MR. McRUER: Yes, my lord.

THE COMMISSIONER: That is for the same year?

MR. ROOTH: Yes, my lord. Weights were not given in 1928.

EXHIBIT No.1348: Value and weight of woven fabrics composed wholly or in part of artificial silk, 1932 importations.

MR. McRUER: The next one is the imports into Canada for the calendar years 1926 to 1936 of artificial silk yarns. A memorandum on it shows the yarns that were imported by Courtaulds and others.

EXHIBIT No.1349: Imports of artificial silk yarn 1926 to 1936.

THE COMMISSIONER: We have not here anything on behalf of Celanese?

MR. McRUER: No, my lord.

THE COMMISSIONER: What is your attitude on behalf of them? Have you anything to say on that?

MR. KELLOCK: I did not hear that, my lord.

THE COMMISSIONER: About the complaint made regarding the policy of the Celanese company.

MR. KELLOCK: I have no instructions at the moment about that.

MR. McRUER: I think my friend is a little inclined, on behalf of his clients, to agree with us. Some of his clients were trying to buy.

THE COMMISSIONER: What is the protection they now have on their product?

MR. McRUER: Well, they have the full protection of artificial silk fabrics and --

THE COMMISSIONER: Well, they make their own yarns?

MR. McRUER: They make their own yarns. Their yarns are 5 per cent under the British preference. They have 28 cents a pound under the intermediate and general.

THE COMMISSIONER: As I understand it, a few of the other manufacturers here say that they should not have any protection at all.

MR. McRUER: That they should not have any protection at all was a view expressed before the Commission, and certainly I contend that it should be very drastically reduced on acetate yarns under the intermediate schedule, because the relief cannot come from Great Britain on account of the way it is organized.

THE COMMISSIONER: I want to hear something about that. I have not heard from the Celanese.

MR. KELLOCK: I can say this: I have no instructions at all to criticize anything that is in my friend's brief on that subject.

THE COMMISSIONER: You just leave it at that?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Before we file these two exhibits, is there anything to be said concerning what they show, -- in a general way? It may save coming back.

MR. KELLOCK: I think it shows the same thing

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(cont'd)

Mr. [illegible]: They make their own grade. Their prices are 5 per cent under the trade price. They have an office and a [illegible] and general.

THE [illegible]: Is I understand it, a few of the other manufacturers have say that they would not have any protection at all.

Mr. [illegible]: That they would not have any protection at all as a very [illegible] before the commission. Of course I [illegible] it should be very [illegible] reduced on [illegible] prices under the introductory schedule, assuming the [illegible] come from [illegible] in an amount of the [illegible] is [illegible].

[illegible]: I [illegible] about that. I have not [illegible] from the [illegible].

Mr. [illegible]: I can say this: I have [illegible] instructions at all to [illegible] anything that is in my [illegible] of on the [illegible].

[illegible]: [illegible]

Mr. [illegible]: [illegible]

[illegible]: [illegible] (Mr. [illegible]) [illegible] what they [illegible]. -- It's [illegible] I [illegible]. [illegible]

Mr. [illegible]: I think it [illegible] [illegible]

as my percentages, except they show quantities, my lord.

MR. McRUER: Yes, but we have them separated here. Take 1928 for instance. The value --

MR. KELLOCK: What exhibit are you talking about?

MR. McRUER: The value of the woven fabrics wholly of artificial silk imported from the United Kingdom is $1,026,000. Those which are partly of artificial silk, $3,416,000. So your lordship will see --

THE COMMISSIONER: There is four and a half million dollars of imports, under the two items, of those?

MR. McRUER: Yes, my lord.

THE COMMISSIONER: Well, it is not of much value unless it is compared to something.

MR. McRUER: Then in 1929 the majority of the fabrics, by long odds, was the mixtures, $3,586,000, wholly of artificial silk, and $4,491,000 partly of artificial silk. Well then your lordship will see how they fell off after 1930. So that when my friend used --

THE COMMISSIONER: How did they fall off?

MR. McRUER: Well, take from 1930, that is the calendar year, $4,367,000.

THE COMMISSIONER: In all? Of both?

MR. McRUER: Yes my lord. In 1931, $1,798,000; in 1932 $1,413,000; in 1933, $1,108,000. When we

as MY performances, except they show quantities, my lord.

MR. MACKAY: Yes, but we have them among us here. Take 1928 for instance. The value --

MR. ALLAN K: What exhibit are you talking about?

MR. MACKAY: The value of the seven factories wholly of artificial silk imported from the United Kingdom is $1,000,000. Those which are partly of artificial silk, $3,416,000. So your lordship will see --

THE CHAIRMAN: There is four and a half million dollars of benefit, where the no benefit of those?

-- MR. [illegible]: I, we have.

MR. [illegible]: Well, it is not so much value unless it is compared to something.

MR. MACKAY: Then in 1929 the majority of factories, by long odds, were the pioneers, $4,000,000, wholly of artificial silk, and $[illegible], partly of artificial silk. Well when your lordship will see how they fell off after 1930. So that is my fixed mind --

THE CHAIRMAN: Has the duty fell off?

MR. MACKAY: Well, take from 1930, that is the closest year, $4,607,000.

THE CHAIRMAN: In 1927 of both?

MR. MACKAY: Yes my lord. In 1931, $1,700,

get down to 1934 it is $891,000. So when my friend uses his percentages --

THE COMMISSIONER: Is that as far as we go?

MR. McRUER: Coming to 1935, it is $537,000; 1936, it is $890,000. So when we get these percentages that show 64.1 per cent imported from the United Kingdom in 1934 as against 43 per cent in 1930, designed to show the great benefit the United Kingdom was getting we find that in fact the total importations in 1934 from the United Kingdom amounted to $891,000 as against $4,367,000 in 1930. It just shows the foolishness of these percentages in meeting anything in the question of trade, the volume of trade.

MR. KELLOCK: I do not find in the trade figures in my friend's brief from start to finish.

MR. McRUER: I have not got any to mislead, then. That is one thing you cannot accuse me of.

MR. KELLOCK: Just on profits you mislead.

MR. McRUER: Oh no, I am very accurate on that, -- distastefully accurate.

MR. KELLOCK: There is this to be taken into consideration. Of course there has been a falling off. There has been a falling off of the industry in this country, and you must take into consideration, in considering the falling off which my friend mentioned, the reduction in the value of the dollar and the falling off in the value of the product itself. That is what I really mean, -- the falling off in the value of the product rather than the value of the

dollar.

MR. McRUER: Oh well, we have got the units.

MR. KEILOCK: When I come to the paragraph in my brief which follows the table set out there, there is a change I must make in the third and fourth lines from the borrom, when I come to them, because in writing this paragraph I had in mind the transposition of the figures in connection with the fabrics in 1934 and 1935.

" The result obtained in the case of fabrics during 1930 to 1935 should be noted. In December 1931 a fixed valuation for duty purposes was placed on the imports of artificial silk fabrics from foreign countries, but not on fabrics from Great Britain. The result was an immediate substantial fall in 1932 and 1933 of the proportion of the import market supplied by foreign imports and a rise in the proportion supplied by the United Kingdom, but despite a continuance of these fixed valuations the trend was reversed in 1934 and 1935, even though there was a surtax placed on Japanese goods".

THE COMMISSIONER: Instead of "when" you put "even though".

MR. KEILOCK: Yes, and I strike out the words "only showed a trend the other way in". So that it reads:

"The trend was reversed in 1934 and 1935 even though there was a surtax placed on Japanese goods."

ROBT. BRYDIE
Official Stenographer
REPORTER

ility.

Mr. Kemp: Oh well, we have met the suits.

Mr. Elliott: When I come to the paragraph in my brief which follows the table set out there, there is a chart e I must make in the third and fourth lines from the bottom, when I come to that, because in writing this paragraph I had in mind the unexpectation of the figures in connection with the tables in 1929 and 1930.

" The result obtained in the case of foreign bonds 1930 to 1938 should be noted. In December 1931 a fixed value tax duty surcharge was placed on the importation of artificial silk fabrics from foreign countries, but not on imports from Great Britain. The result was an immediate substantial fall in 1932 and 1933 of the proportion of the import market supplied by foreign imports and a rise in the proportion supplied by the United Kingdom, but despite a considerable of the ad fixed valuations the trend was reversed in 1934 and 1935 even though there was a surtax placed on Japanese goods.

Mr. Commissioner: Instead of "taken" you say "made (inaudible)".

Mr. Elliott: Yes, so I finish out the sentence "only showed a trend the other way in". So that it reads:

"The trend was reversed in 1934 and 1935 even though there was a fixed duty on foreign goods."

MR. McRUER: What has Japanese goods got to do with it? We have got imports from Japan on this table.

MR. KELLOCK: I am speaking about imports of Japanese goods from Japan.

MR. McRUER: What have they got to do with the swing away from Great Britain; because the table does not bear you out on that?

MR. KELLOCK: The table does bear me out exactly.

MR. McRUER: In 1934, when the swing was away from Great Britain on account of Japanese goods there were $56,000 worth.

MR. KELLOCK: My friend does not strike out the words I asked him to strike out or he would not be raising the objection he is raising.

MR. McRUER: I am trying to make sense out of the thing as it was written.

THE COMMISSIONER: Do you still refer to Japanese goods, or how does your statement read now? "Despite a continuance of these fixed valuations the trend was reversed in 1934" and what?

MR. KELLOCK:

" And 1935, even though there was a surtax placed on Japanese goods."

THE COMMISSIONER: Well, the surtax placed on Japanese goods was not until July, 1935.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Only from then on. "In spite of that".

MR. KELLOCK: Yes, that is right, "Even though there was a surtax placed on Japanese goods" in 1935.

THE COMMISSIONER: And it did not affect shipments until --

MR. KELLOCK: It did not affect shipments until the 15th of November.

THE COMMISSIONER: Well, you see, you did not give them much time.

MR. KELLOCK: That is right, my lord.

"Both the fixed valuation and surtax ceased on the first of January 1936.

It should be pointed out that in Great Britain the manufacturer of artificial silk yarn --"

And my friend has drawn attention to this.

"-- pays an excise duty of 6 pence per pound when selling the yarn for further manufacture in England -- "

THE COMMISSIONER: You say the British manufacturer pays that?

MR. KELLOCK: Yes, but he gets back twice as much when he exports.

THE COMMISSIONER: He gets a bonus?

MR. KELLOCK: He gets a bonus when he exports. That is a bonus on exportation. We cannot do anything about that at the moment. That is the substance of that paraggraph, my lord.

Then I come to Silk Fabrics. Before I leave artificial silk fabrics I just want to point out

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-[illegible]-

MR. [illegible]: Sir, that is right, "the [illegible] Dominion [illegible] is fair."

MR. [illegible]: And it did not relieve administration [illegible] --

MR. [illegible]: It did not relieve administration until the 15th of November.

THE COMMISSIONER: Well, you see, you did not give them much time.

MR. [illegible]: That is right, my lord.

"Both the fixed valuation and [illegible] cotton on the first of January 1918.

It should be pointed out that in order to [illegible] the manufacturer of unbleached silk yarn -- and my friend has drawn attention to this.

"-- pays an ad va duty of 5 cents per pound when selling the yarn for further manufacture in Canada."

MR. [illegible]: You say the [illegible] manufacturer pays that?

MR. [illegible]: Yes, but he gets back into as much [illegible].

MR. [illegible]: He gets a bounty?

MR. [illegible]: He gets a bounty when he ships it. That is a bonus on manufacture. The [illegible] is [illegible] that of the account. That is the sub-

MR. [illegible]

that when my friend was presenting his argument and referred to the table set out on this page and read some figures into the record, those were figures for the fiscal years 1939 to 1955 and they were only the imports under 1, 3 and 5 of the artificial silk items in the tariff. The figures my friend put in now will be correct, but the figures he put in the other day were not correct.

THE COMMISSIONER: Has the new budget anything to say about silks?

MR. KELLOCK: Yes my lord. I can give your lordship that.

THE COMMISSIONER: You mean here pure silk, of course?

MR. KELLOCK: Pure silk. I can give your lordship that immediately.

THE COMMISSIONER: Where is the place for that? Later on?

MR. KELLOCK: The next page, really, my lord.

THE COMMISSIONER: All right. We will wait for it.

MR. KELLOCK:

" Silk Fabrics: Since the establishment of the 1930 and 1931 duty rates on silk fabrics, the silk industry in Canada has undergone considerable development. Exhibit 637 shows that in 1951 as compared to 1930 for fifteen mills producing silk fabrics, and not including silk throwsters or dyers doing commission work, the number of employees

"increased by 42.1 per cent, the hours of labour increased by 50.8 per cent, and the yardage of silk fabrics increased by 79.1 per cent, and a reference to the figures given in the early part of this factum deals with the development in the later years.

The policy adopted in 1930, as expressed in the duty rates then established, has therefore resulted in the building up of a silk industry in Canada and the provision of a substantial quantity of employment at a time when such a result was particularly necessary and desirable.

The growth of the industry since 1930 has been accompanied by a downward trend in prices together with keen internal competition."

My friend adopts thatin him own brief.

" At the same time the expansion or increase in the use and decrease in the price of artificial silk has affected the demand for real silk and the producers of silk have turned in an increasing degree, (Evidence here referred to) to the production of artificial silk fabrics, although the production of real silk is still substantial. Consequently Canadian producers have full facilities for producing silk fabrics to meet the consumption of such goods in Canada."

With regard to Cut Pile Fabrics there was no change here, my lord.

increased by 4.1 per cent, the hours of labour increased by 50.6 per cent, and the production of silk fabrics increased by 72.1 per cent, and in reference to the figures given in the early part of this Return dealing with the development in the last year.

The policy adopted in 1920, as expressed in the duty notes then actually, has therefore resulted in the building up of a silk industry in Canada and the provision of a substantial quantity of employment at a time when such a result was practically necessary and desirable.

The growth of the industry since 1920 has been accompanied by a downward trend in prices and there has been internal competition.

My friend asserts "Let him own build."

" ...t the same time the expansion or increase in the use and decrease in the price of artificial silk has allowed the (illegible) Ver Lend Act to the production of silk has been turned in an increasing degree, (without from referred to) to the production of artificial silk fabrics, all used the production of real silk is still substantial. Consequently domestic producers have built factories for producing silk fabrics to meet the requirements of such people in Canada.

With regard to out file fabrics there was no dumping, Mr. Lord.

MR. McRUER: What about the changes on silk?

MR. KELLOCK: Wait a minute. I am coming to it. "There are two tariff items covering cut pile fabrics, generally known as velvets and plushes, with pile wholly of silk or artificial silk, but not containing wool, the duty rates in which are the same as in the 1928 revision. There was no increase in the duty rates in these items in 1930, the only change being in the French Treaty rate in 560c, where instead of a treaty rate of 20 per cent the present treaty rate is 32½ per cent less 25 per cent, or net 24.38 per cent."

THE COMMISSIONER: That is the case to-day?

MR. KELLOCK: That is the case to-day, my lord. Then with regard to Ribbons, there is no change here.

"There are two tariff items covering ribbons of silk or artificial silk, but containing no wool, the rates of which are the same to-day as in 1928. There was no increase in the rates in these items in 1930, the only change in the rates being that in 1928 the treaty rates in both items were 25 per cent, while to-day they are 32½ per cent less 15 per cent, or net 26.73 per cent."

Then if I might give your lordship the change which applies to the next item, Throwsters and Thread Manufacturers Items, which are silk cords and threads, item 558c. The old rate was 17½ per cent

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Mr. MOFFAT: Shall I read the remarks on MILK?

F. J. LIGHT: Yes, please. I am ready to do it.

"There are two tests of items contained only milk products, commonly known as vitamin and calcium, with this quality of milk or artificial milk, not cows milk proof, the dairy farmer is worth as the same as in the 1929 revision. There was no increase in the duty on the same items in 1930, and only charge being in the French Treaty rate in 1933, where instead of a thirty cent or 20 per cent the present duty rate is 3½ per cent is 25 per cent, or not 24.25 per cent.

Mr. CHARLES: That is the same tariff.

Mr. MITCHELL: That is who same tariff.

"There are two tariff items covering milkers or milk or artificial milk, not containing no meat, the rates of which are the same duty as in 1929. There was no increase in the duty in these items in 1930. The only change in the rate being that in 1933 the tariff rates in both items were 35 per cent, while today they are 25% - were from 15 per cent.

Then if I might give you the items covering which applies to the meat list. Hermetic and Sterilized Milk Items, though the milk cream and Yoghurt, Item 1000. The old rate was 17½ per cent

and the new rate is 15 per cent. At the same time I will give your lordship the change on silk fabrics under item 560a. The old rate was 27½ per cent and the new is 22½ per cent. With regard to throwsters and thread manufacturers items --

THE COMMISSIONER: Pardon me a moment: Is this rate here the British rate, or the intermediate, or what is it?

MR. KELLOCK: No change in the intermediate. Just the British preferential in each case; in fact in all these cases of new duties to-day it applies only to the British preference.

THE COMMISSIONER: Do I understand then, are you able to tell me that in so far as textiles are concerned they are having no revisions made in the intermediate and general rates?

MR. KELLOCK: Oh yes there have been.

MR. McRUER: One or two.

THE COMMISSIONER: But in so far as those you are giving me to-day, these are all British.

MR. McRUER: Some of the cotton items, there is a reduction in the specific. Not in the piece goods. I think that is so. We will get that again.

THE COMMISSIONER: I just wanted to make sure we are not dealing with that to-day.

MR. KELLOCK: Oh no.

"From an examination of pages 384 and 388 of the Customs Tariff and Amendments, with index to

"August 31st, 1936, it will be seen that there are five tariff items covering goods such as are produced by throwsters and thread manufacturers. The tariff rates in four of these items remained unchanged since the revision in 1928, although there were changes in raw material duties used in their manufacture. The only changes in these four items in this period was the treaty rate in item 558c, where the intermediate rate of 22½ per cent is now in effect from treaty countries instead of 22½ per cent less 10 per cent as formerly. One throwsters and thread manufacturers item had the rates increased in 1930, but as the rates were then made the same as the rates in the raw material item, the result was to remove any spread to protect throwing of artificial silk yarns in Canada. This item 558d was referred to the Tariff Board and in the Tariff Board report in 1936, implemented in the budget of that year, a spread in the British preferential of 2½ per cent was provided as between acetate yarn and thrown acetate yarn and 4½ per cent on viscose yarn, but so far as the intermediate and general tariffs were concerned the throwsters finished product carries thesame rates as their raw material".

Therefore there is no protection as against intermediate and general rates.

Mr. McKUM: Well, there is a minimum specific duty, though.

"[illegible] fact", [illegible], is still [illegible] [illegible] [illegible]

MR. KELLOCK: Which applies on both, though, does it not?

MR. HOOPER: The ad valorem rates are different, but on account of the specific duty becoming operative, why there is no difference.

MR. KELLOCK: Is not that what I have said, that it is the same on both?

MR. HOOPER: I just want to make it clear it is the specific duty; you are not speaking of the ad valorem duty.

THE COMMISSIONER: Yes; you say "as far as the intermediate and general tariffs are concerned the throwsters finished product carries the same rates as their raw material".

MR. KELLOCK: Yes. Is that not correct?

MR. McRUER: That is not quite correct. You have an ad valorem which is different but a minimum specific which is the same. Mr. Hooper says, between the general and the intermediate. He mixed the intermediate with the general.

MR. KELLOCK: My factum is correct, is it? The statement in my factum is correct?

MR. HOOPER: Well, not quite.

MR. KELLOCK: Well, all right. 558 states -- that is the item I am speaking of: it is --

"Rovings, yarns and warps wholly of artificial silk, or similar synthetic fibres, produced by chemical processes, not more advanced than singles, not coloured, with not more than 7 turns to the

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

[illegible] MR. [illegible]: [illegible]

"inch, under such regulations as the minister may prescribe: (a) produced by cellulose acetate, 5 per cent British preference, 30 per cent intermediate, 35 per cent general; provided that in no case shall the duty under the intermediate or the general tariff be less than, per pound, 28 cents under the intermediate and 28 cents under the general; (b) n.o.p. 20 per cent British preference, 30 per cent intermediate, 35 per cent general, provided that in no case shall the duty under the intermediate or the general tariff be less than, per pound, 28 cents in the case of the intermediate and 28 cents in the case of the general".

That is the raw material item, my lord. Now 558d is the throwsters item. After he has done his work, and these rovings, yarns and warps wholly or in part of artificial silk or similar synthetic fibres produced by chemical processes, n.o.p., including threads, cords or twists for sewing, embroidering or other purposes, not to contain silk; artificial silk yarns wholly or partly covered with metallic strip, one pound of which shall contain not less than 10,000 yards, under such regulations as the minister may prescribe". That is the finished product of the throwsters. Now (a) produced wholly from cellulose acetate, British preferential 7½ per cent, intermediate tariff 30 per cent,

general 35 per cent, provided that in no case shall the duty under the intermediate or the general tariff be less than, per pound, 28 cents intermediate and 28 cents general. Now, as I read it, those are exactly the same up to that point. Then (b) n.o.p. just the same in both, 25 per cent, British preference intermediate 20 per cent, general 35 per cent, provided that in no case shall the duty under the intermediate or the general tariff be less than, per pound, 28 cents intermediate and 28 cents general. And as I look at the former item, the raw material, it is exactly the same, so I do not see what is wrong with the statement in my factum.

MR. McRUER: What is your contention? That the duties on the unthrown yarn should be reduced or that the duties on the thrown yarn should be increased?

MR. KELLOCK: I am not making any contention at the moment.

MR. McRUER: I thought it was put in here for a purpose.

MR. KELLOCK: It is put in here for a purpose. I first answer your contention that my statement was not right. The purpose of it is to show the necessity for the spreads between the raw material of the throwster and his finished product.

MR. McRUER: Do you want the spread by reducing the unthrown yarn or increasing the thrown yarn? If it is to be of value to the Commission

I should like to know, because I want to deal with it.

MR. KELLOCK: Perhaps I did not have your contention when you were asking in a blanket way to have duties reduced. What was your contention?

MR. McRUER: I think my contention was that yarns, all long spun yarns, are too high, because they are a raw material, and that they obstruct trade by having high duties like 28 cents a pound on raw materials.

Mr. KELLOCK: I suppose, my lord, it gets down to this —

MR. McRUER: I want to know if you agree with me or not.

THE COMMISSIONER: That is, under the intermediate and general tariffs.

MR. McRUER: Yes.

MR. KELLOCK: I suppose it gets down to this, that under the intermediate and general tariff at the moment the throwster has no protection. Now if the yarn manufacturer is to have his protection, and the existing level is the proper one, if the throwster is to have any protection at all, it would have to be by an increase of the intermediate and the general rates.

MR. McRUER: Well then, am I not right in this, that when you were cross examining Mr. Howson with reference to certain silk companies he dealt with, you contended that some of those companies

were chosen as showing abnormal profits, that he had picked out certain companies in which profits were higher than the other companies, and you contended that they were engaged in throwing silk and that they ought not to be taken into consideration along with the other companies; that they did throwing besides the other operations, therefore their profits were higher.

MR. KELLOCK: No, no.

MR. McRUER: First, was it not a fact that you contended that Mr. Howson ought not to have taken that in with the other companies, taken in the ones that did throwing?

MR. KELLOCK: If my friend would let me complete the answer I started to make, -- I think what my friend has in mind is the Belding-Corticelli company.

MR. McRUER: No.

MR. KELLOCK: Wait a minute. I have the greatest difficulty in addressing the court.

MR. McRUER: I have not that in mind. I know what I have in mind. You may go on and contend that I have, but I have not.

MR. KELLOCK: I still want to answer the question as I understand it, and if I do not answer it, ask me another one.

MR. McRUER: Then don't say what is in my mind.

MR. KELLOCK: My contention in cross-examining

were shown to be showing abnormal profits, that it had picked out certain companies with which profits were higher than the other companies, and you considered that they were engaged in throwing silk and that they ought not to be taken into consideration along with the other companies; that they did throw the business [illegible], therefore their profits were higher.

Mr. [illegible]: No, no.

Mr. Hogg: Then, was it not a fact that you mentioned that Mr. Hobson ought not to have taken that in with the other companies, also in the mind that did throwing?

Mr. [illegible]: If my friend means by the same [illegible] the answer I started to make, -- I think what my friend has in mind is the Holland-Dryfoos company.

Mr. Hogg: No.

Mr. [illegible]: Just a minute. I have the [illegible] [illegible] in mind.

Mr. Hogg: I have not that in mind. I have what I have in mind. You may go on and say what I have, but I have not.

Mr. [illegible]: I will want to answer it [illegible] as I understand it, and if I do not answer it, ask me another one.

Mr. Hogg: I do not say what is in my mind.

Mr. [illegible]: My contention is cross-[illegible]

Mr. Howson was that when he included the Belding-Corticelli company in the group of silk companies and was attempting to compare the results of the operation of that company with the results of the operations of the other silk companies I objected to that because I said that the Belding-Corticelli company sold direct to the retail trade, and accordingly had a much higher selling expense, and that it was not at all a comparable company to companies which were purely manufacturing silk cottons.

MR. McRUER: That has nothing to do with throwing.

MR. KELLOCK: Will you please not interrupt me?

MR. McRUER: You are dealing with another thing altogether.

MR. KELLOCK: You can remain a gentleman.

THE COMMISSIONER: Yes. I remember that you raised that point.

MR. KELLOCK: And Mr. Howson's answer to that was, well, the grouping in the Price Spreads Commission had been the same, and he followed it, and I pointed out that that was so, but that Mr. Glassco had given evidence before that commission pointing out the difference between the Belding-Corticelli company and the other companies.

THE COMMISSIONER: The sole difference, then, you have in mind, is that the Belding-Corticelli company sells direct to the trade and has a larger

Mr. [illegible] was [illegible] that [illegible] [illegible] company in the group of silk companies and was attempting to impeach the results of the operation of that company with the results of the operations of the other silk companies I objected to that because I said that the [illegible] company will direct to the result there, and accordingly had a much higher silk me company, and it was not at all a comparable company to compare which were merely manufacturing silk [illegible].

Mr. [illegible]: That has nothing to do with [illegible].

Mr. [illegible]: Will you please not [illegible] me?

Mr. [illegible]: You are [illegible] with another [illegible].

Mr. [illegible]: You can [illegible] a [illegible].

This [illegible]: Yes. I remember that [illegible].

Mr. [illegible]: And Mr. [illegible]'s answer to that was, well, the [illegible] is the [illegible] [illegible] [illegible] been the same, and he [illegible] it, and I pointed out that it was so, but [illegible] [illegible] have given evidence before the [illegible] point [illegible] out the difference between the [illegible] company and the other companies.

[illegible]

selling expense.

MR. KELLOCK: A larger distribution expense. And as I pointed out, my lord, in connection with all these sections, that if you have companies, taking the silk companies, that throw and spin and weave and dye and finish, -- they do all that -- and you get another one that only does one or two or three of these operations, you must bear those things in mind in comparing the results of the two companies. That is always present whether it is a silk or a wool or a knitting group. It depends on the degree of fabrication. Have I answered my friend's question?

MR. McRUER: No, my friend has not answered the question because he has dealt with an entirely different point altogether.

MR. KELLOCK: What was your point?

MR. McRUER: My point was in the cross examination of Mr. Howson; I think it was with regard to the Dominion Silk Mills Limited.

MR. KELLOCK: I do not even remember that.

MR. McRUER: The point is, with regard to one of the companies my friend raised the point that this company did throwing and therefore it should not be taken as in the same class as the others when you are considering the profits.

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selling operations.

Mr. [illegible]: Larger discriminations exist, and as I pointed out, my lord, in connection with all these new lines, that if you have connections, [illegible] your pile [illegible], that [illegible] and [illegible] are one and finish, -- they do all that -- and you get another one that only deals one or two or three of these operations. You must bear those things in mind in considering the results of the combinations. The [illegible] element which it is a silk or a wool or a knitting group. It depends on the degree of protection. Have I answered my friend's question?

Mr. [illegible]: No, my friend has not answered the question because he has dealt with a entirely different point of view.

Mr. [illegible]: What was your point?

Mr. [illegible]: My point was in the cross-examination of Mr. [illegible]; I think it was with regard to the Dominion Silk Mills Limited.

Mr. [illegible]: I do not even remember that.

Mr. [illegible]: The point is, with regard to one of the companies my friend raised the point that this company did abandon and therefore it should pay the public as if it had been in business. [illegible] accordingly for [illegible].

Page [illegible]

THE COMMISSIONER: What reason?

MR. McRUER: Because evidently the profits from throwing were greater than the others. I will have it looked up. It had nothing to do with the other question he raised. I was talking about throwing, not about selling directly to the trade.

MR. KELLOCK: I am also reminded that another difference in connection with the Belding-Corticelli Company is that they do not make broad silk at all. That is another reason they were not comparable. I do not recall what my friend mentions, but if he looks up the evidence I will be very glad to do what I can.

MR. McRUER: I am talking about throwing, not broad silk.

MR. KELLOCK: You are throwing something at me I do not understand.

MR. McRUER: It was you threw it at Mr. Howson.

THE COMMISSIONER: I think you both pretty good throwsters.

MR. KELLOCK: My lord, I come to drawbacks.

"There are two drawback items which effect silk and artificial silk duty rates, Drawback item 1013 provides a drawback of 65% of the duty on fabrics of silk and satin, embroidered and embossed chiffon, casket gimps and fringes when used in the manufacture of burial robes and drawback item 1015 provides a drawback of 95% of the duty on woven fabrics in the web when used

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MR. MORDEN: Because evidently the profits from throwing were greater than the concern. I will have looked up. It had nothing to do with the other do making. I was talking about throwing, not about dressing, so the issue.

MR. KELLOCK: I am also reminded that another thing in connection with the Reliance-Dominion Company is they do not make bread milk at all. That is another they were not comparable. I do not recall what my questions, but if he looks up the evidence I will be glad to do what I can.

MR. MORDEN: I am talking about throwing, not from milk.

MR. KELLOCK: You are talking something at me I not understand.

MR. MORDEN: It was you threw it at Mr. Morden.

THE COMMISSIONER: I think you been pretty good humoured.

MR. KELLOCK: My idea, I come to downhearts.

There are two treasury issue made with the milk or milkless milk are [illegible]. [illegible] item 1613 provides a drawback of [illegible] of the duty on fabrics of milk and wool, manufactured and [illegible] on wool in the manufacture of burial robes and dress or item 1613 provides a drawback of [illegible] of the duty on woven fabrics in use or [illegible]

in the manufacture of linings for hats and caps.

As already submitted, compound duties, that is a combination of ad valorem and specific rates, are a necessity in the case of all textiles because of the wide fluctuations in the cost of the various kinds of raw materials - wool, silk, cotton. This fact is recognized in the United Kingdom tariff."

THE COMMISSIONER: Well, we have already argued that.

MR. KELLOCK: Yes, my lord,

THE COMMISSIONER: We will take a little time.

-- Commission adjourned for recess.

-- On resuming:

MR. KELLOCK: My lord, I would like to deal with my friend's brief where he deals with the same subject matter, that is, tariff protection in part 3. I refer to begin with to page 43. My friend sets out there a number of things he says it is convenient to determine, and the third is as to whether or not employers of labour shared the privileges granted to them by the customs tariff laws of Canada with workers, and I just remind your lordship of the evidence which is that the Canadian employers did share the privilege.

THE COMMISSIONER: Of course, he limits that by an alternative.

"--or have they on the other hand purchased their labour in the same manner that they would purchase raw material in the lowest markets of the

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COURTESY STENOGRAPHERS
TORONTO CANADA

in the manufacture of linings for hats and caps.

As already indicated, mongrel silks, that is a combination of ad valorem and specific rates, are a necessity in the case of all textil because of the wide fluctuations in the cost of the various kinds of raw materials - wool, silk, cotton. This fact is recognized in the United States tariff."

THE COMMISSIONER: Well, we have already argued that.

MR. WHITNOR: Yes, my lord.

THE COMMISSIONER: We will take a little time.

— Commission adjourned for recess.

— On resuming:

MR. WHITNOR: My lord, I would like to deal with my friend's brief where he deals with the same subject matter, that is, tariff protection in part 4. I refer to begin with to page 46. My friend sets out there a number of things he says it is convenient to determine, and the third is as to whether or not employers of labour where the privileges arising to them by the customs tariff laws of Canada with which and I just remind your lordship of the evidence which is that the British manufacturer had taken advantage of the tariff protection to increase prices, or charge, we think that by [illegible] as [illegible].

--- Have there been any or are there any protected [illegible] industries in the sense meant that they could

Dominion."

MR. KELLOCK: Yes, my lord; I merely want to tie in that to the evidence which is before your lordship that the Canadian Textile manufacturers have to pay 60% higher wages than the textile manufacturer in Great Britain.

THE COMMISSIONER: Well, suppose we take that for granted.

MR. KELLOCK: 60% and up.

THE COMMISSIONER: Suppose we take that for granted; that does not cover the whole ground.

MR. KELLOCK: It does not cover the whole ground. Of course, my friend---

The COMMISSIONER: I do not say it does, but it still may leave the industry here in this position that it cannot pay its workers such wages as should permit him to try to function. It is not necessary to say we are giving him 60 per cent. more than he gets some place else.

MR. KELLOCK: Of course, my friend does not touch the point I am touching. He is only speaking about domestic wages in this country.

THE COMMISSIONER: That is what I say, you see. Domestic wages in any industry in this country might be better than what you can point to in any other country. Yet the industry may be of such a kind that the wages, having regard to the way we must live in this country, you must have lots of shelter and clothing and substantial

Dominion."

MR. KELLOCK: Yes, my lord; I merely want to tie in that to the evidence which is before your lordship that the Canadian Textile manufacturers have to pay much higher wages than the textile manufacturer in Great Britain.

THE COMMISSIONER: Well, suppose we take that for granted.

MR. KELLOCK: 80% and up.

THE COMMISSIONER: Suppose we take that for granted; that does not cover the whole ground.

MR. KELLOCK: It does not cover the whole ground. Of course, my friend---

THE COMMISSIONER: I do not say it does, but it still may leave the industry here in this condition that it cannot pay its workers such wages as should permit him to try to function. It is not necessary to say we are giving him 80 per cent, more than he pays some place else.

MR. KELLOCK: Of course, my friend does not touch the point I am touching. He is only speaking about domestic wages in this country.

THE COMMISSIONER: That is what I mean, you see. Domestic wages in any industry in this country might better than what you can point to in any other country. Yet the industry may be of such a kind that the wages can not compare to the wages in other

food, and so on, that you cannot, notwithstanding everything carry on your industry here and do justice to workers. There is a possibility of that. He seems to say there that if you purchase your labour as you would raw material, that is, go to the lowest market in Canada to get it, that is not doing justice to the worker.

MR. KELLOCK: I don't know---

THE COMMISSIONER: Read the whole thing. It is all one sentence. He says:

"It is convenient to determine if the employers of labour shared the privileges granted to them by the Customs Tariff laws of Canada, with workers, or have they on the other hand purchased their labour in the same manner that they would purchase raw material in the lowest markets of the Dominion."

MR. KELLOCK: My lord, in order to deal with the point my friend raises specifically I just tie in with that what I have pointed out in my brief as to how wages paid in the textile industry compare with other industries in the country, and I have given your lordship an exhaustive analysis of that in my factum.

THE COMMISSIONER: But that is not meeting it, simply comparing your wages with those of other countries.

MR. KELLOCK: I have given in my factum how my wages compare with other industries in the country.

THE COMMISSIONER: Oh, I beg your pardon?

MR. KELLOCK: I have done that exhaustively.

find, you say, that you cannot, consistently with carrying on your industry here and do justice to workers. There is a possibility of that. He seems to say there that if you purchase your labour as you would raw material, that is, go to the lowest market in Canada to get it, that is not doing justice to the worker.

MR. [illegible] I don't know——

THE CHAIRMAN: read the whole thing. It is only one sentence. He says:

"It is convenient to determine if the employer of labour abroad the privilege granted to them by the Customs Tariff Laws of Canada, with workers, or have they on the other hand purchased their labour in the same manner that they would purchase raw material in the lowest markets of the Dominion."

MR. MELLOR: My lord, in order to deal with the point my friend raises specifically I just tie in with that what I have pointed out in my brief as to how wages paid in the textile industry compare with other industries in the country, and I have given your lord ship an exhaustive analysis of that in my factum.

THE CHAIRMAN: But that is not meeting it.

MR. MELLOR: I have given in my factum how my wages compare with other industries in the country.

THE CHAIRMAN: Oh, I beg your pardon?

MR. MELLOR: I have given your attention

MR. McRUER: That does not meet the question of the sharing of the privilege. I deal with the question of the profits this industry has made.

THE COMMISSIONER: You put it this way, have they given the workers the benefits of the Customs Laws or the only alternative you put there, have they dealt with labour, purchased it in the same manner as they would raw material. Then, you refer to the Dominion Textile Company's Brief about that.

MR. McRUER: Yes.

THE COMMISSIONER: Something important you found there; what is it?

MR. McRUER: They state they purchased their labour in the lowest market.

THE COMMISSIONER: That is the thing you were dealing with specifically. Just a minute until we see what Dominion Textile say.

MR. KELLOCK: I recall what Mr.Gordon said.

MR. McRUER: It is in the brief, though.

MR. KELLOCK: It is in the brief.

MR. McRUER: Page 32, about the third paragraph:

"Labour's share in the rewards of industry is influenced not only by the relative plenty of scarcity of the different agents of production, but also by the relative plenty or scarcity of the different kinds of labour. This in part accounts for differences in the levels of earnings of different kinds of groups of labour. Facts and circumstances--"

MR. BRYDIN: That does not meet the question of the sharing of the privilege. I deal with the question of the profits this industry has made.

THE COURT: I mean: You put it this way, have they given the workers the benefits of the Customs Tariff or the only alternative you put there, have they dealt with labour, purchased it in the same manner as they would raw material. Then, you refer to the Dominion. Justice Commission being about that.

MR. MONK: Yes.

THE COURT: Something important you found there; what is it?

MR. MONK: They made very purchased their labour in the lowest market.

THE COURT: That is the thing you were dealing with specifically. Just a minute until we see what Dominion Textile say.

MR. MILLAR: I recall what Mr. Gordon said.

MR. MONK: It is in this brief, though.

MR. MILLAR: It is in the brief.

MR. MONK: Page 3, under the Tariff Commission: "Labour's share in the rewards of industry is influenced not only by the relative scarcity of scarcity of the different agents of production, but also by the relative scarcity or scarcity of the different kinds of labour. This is just accounts for differences in the levels of wages.

Then, at the end of the paragraph;

"If the number of any group of wage-earners, is low relative to the addition made by this group to the production of market values, their wages will be high, and vice versa. The determination of their wage level is an independent process."

Also at the top of page 33, the first paragraph on page 33.

THE COMMISSIONER: You mean in this connection it should be low, that there is no fixed demand authorizing a definite number of workers of any particular kind. The demand varies with the cost.

MR. McRuer: Yes.

THE COMMISSIONER: When the cost becomes uneconomical the larger number of workers will be decreased. On the other hand if the efficiency of the workers leads to greater productivity and greater return to industry it will lead to higher wages. Well, that is what the Dominion Textile has to say.

MR. McRUER: And at the foot of the page 9 too:

"The fact that an industry is granted tariff protection is not a reason for which employees in that industry should be paid upon a higher level than other comparable groups. The Primary purpose of a tariff is to permit the establishment within a country of an industry otherwise unable to exist. The object is not to favour one group of employees any more than one group of employers, by permitting

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then, at the end of the paragraph:

"If the number of any group of wage-earners, in low relative to the addition made by this group to the production of market values, their wages will be high, and vice versa. The determination of their wage level is an independent process."

Also at the top of page 66, the first paragraph on page

THE CHAIRMAN: You mean in this connection it is to be low, that there is no fixed demand authorizing a definite number of workers of any particular kind.

The demand varies with the work.

MR. MOGDEN: Yes.

THE CHAIRMAN: When the work becomes mechanized the larger number of workers will be dispensed.

On the other hand if the efficiency of the workers is to greater productivity and greater return to industry it will lead to higher wages. Well, that is what the Dominion Textile has to say.

MR. MOGDEN: And at the foot of the page: "The fact that an industry is granted tariff protection is not a reason for union employees in that industry demanding an equal share of the profits."

The subject is not to favour one group of employees

such group to enjoy a favoured and uneconomic position within the country."

I think that is precisely what it does very often for the employers.

"The purpose is to provide additionalemployment at a scale of wages in accordance with the level of economic development in the country, as well as to round out its industrial activity.

If the imposition of a tariff was for the purpose of raising the wage level above the average in similar or other industries, then such tariff would not be necessary."

I don't just quite follow that.

THE COMMISSIONER: I don't understand that.

MR. McRUER: Mr. Heward will probably explain it.

THE COMMISSIONER: He says it is intended to enable domestic industry which is to be granted protection to employ labour at what approximates a normal wage having regard to economic conditions in the country. Anyhow, what is your position, Mr. Kellock?

MR. KELLOCK: I point out---

THE COMMISSIONER: We will have to hear Mr. Heward.

MR. KELLOCK: Yes, my lord. I point first to the language that my friend adopts that the employers of labour should share the privileges to them. I have already dealt with that, my lord. My friend seems to think that the mere existence of a tariff to enable industry to operate gives the

soon come to enjoy a favoured and unassailable position within the country."

I think that is precisely what it does very much for the worker.

"The purpose is to provide additional employment at a rate of wages in accordance with the level of economic development in the country, as well as to round out its industrial activity.

If the imposition of a tariff was for the purpose of raising the wage level above the average in similar or other industries, then such tariff would not be necessary."

I don't just quite follow that.

THE CHAIRMAN: I don't understand that.

MR. WOODS: Mr. Howard will shortly explain it.

THE HON. MR. ROBERTS: He says it is intended to encourage domestic industry which is to be given the protection to employ labour at what approximates a normal wage having regard to economic conditions in this country. Anyhow, what is your question, Mr. Williams?

MR. WILLIAMS: I would ask——

THE CHAIRMAN: We will have to hear Mr. Howard.

MR. HOWARD: Yes, my lord. I point first to the language that my friend adopts that the employers of labour should have the privilege to them. I have already dealt with that, my lord. My friend seems to think that the mere existence of

industry something in the way of a fund, as he expressed it elsewhere, that they have got a fund in their hands that they can spread around a little bit more freely than an industry, if you can find one, that is not related to tariffs. Now, my submission is that a tariff is put on to enable industry to operate at all, not to ~~get~~ give it extra money. My friend seems to think it would operate anyway and the tariff simply gives it this extra fund. I do not think that can be substantiated at all, my lord. Tariff simply must be on the theory that it enables industry to operate in this country whereas it could not operate at all if the tariff were not there.

THE COMMISSIONER: You see you must get back to the fundementals. Why should an industry be encouraged to operate here where it cannot operate naturally, where it must have the protection of the tariff to operate and must be allowed, therefore, to demand from the consumer a price for his goods higher than his free trade price would be. You cannot say that is in order to make the shareholders wealthy. You cannot say that. You say, "well, it is because it does good to the community," and one of the things they might do in the way of good to the community is employ a large number of workers.

MR. KELLOCK: At good wages.

THE COMMISSIONER: At good wages andunder good conditions. If they say as far as wages are

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industry something in the way of a fund, as he suggested it elsewhere, that they have got a fund in Victoria that they can spread around a little bit more freely than an industry, if you can find one, that is not related to tariffs. Now, my question is that a tariff is put on to enable industry to exist at all, not to give it extra money. My friend seems to think it would operate anyway and the tariff simply gives it this extra fund. I do not think that can be substantiated at all, my lord. Tariff simply must be on the theory that it enables industry to operate in this country whereas it could not operate at all if the tariff were not there.

Lord Cassels: You see you must get back to fundamentals. Why should an industry be encouraged to operate here unless it cannot operate naturally, where it must have the protection of the tariff to operate and must be allowed, therefore, to levy from the consumer a price for its goods higher than the free trade price would be. You cannot say that in order to make the manufacturers wealthy. You cannot say that. You say, "Well, it is because it does good to the community," and one of the things they might do in this way of good to the community is employ a large number of people.

concerned we are going where we can get the cheapest, and that is as far as we are concerned about wages it seems to me that is a very inadequate answer.

MR. KELLOCK: My lord, I do not think that is what Mr. Gordon says in his evidence. That is certainly not what this industry I represent says.

THE COMMISSIONER: I do not say it is. We will have to hear from Mr. Heward.

MR. McRUER: When I addressed myself to it I made the statement and I think I recollect both Mr. Gordon and Mr. Heward saying behind me "Exactly right."

MR. KELLOCK: Well, they will speak for themselves. The mere existence of a tariff apart from the height does not enable an industry which operates behind that tariff to pay better wages merely because of that fact than an industry, we will say, that has not got a tariff. You may enable an industry to pay better wages, and increasingly better wages by increasing protection, and no doubt one of the things your lordship is doing here will be ascertaining from the results of the companies behind this tariff wall whether or not the proportion as between shareholders and labour has been too much.

THE COMMISSIONER: Yes, there are many things to be considered. In granting you a protective tariff the Government deprives itself of revenue that it would get from a purely revenue tariff to begin with, and that is one of the favours given you. Now, in

concerned we are going above we can get the company, that is as far as we are concerned about wages it seems to me that is a very inconsequential matter.

Mr. Mallory: My lord, I do not think that is what Gordon says in his evidence. That is certainly not what this industry I represent says.

The Commissioner: I do not say it is. We will have to hear from Mr. Howard.

Mr. Vondy: When I addressed myself to it I made the statement and I think I recollect both Mr. Gordon and Mr. Howard saying behind me "exactly right."

Mr. McLean: Well, they will speak for themselves. The mere existence of a tariff apart from the height does not enable an industry which operates behind that tariff to pay better wages merely because of that fact than an industry, we will say, that has not got a tariff. You may enable an industry to pay better wages, and increasingly better wages by increasing protection, and no doubt one of the things your industry in Ontario will be accomplishing from the point of the complaints behind this tariff will depend on not the proportion as between the industries but rather has been too much.

The Commissioner: Yes, these are only things to be considered. In granting you a protective tariff [illegible] you [illegible] with,

return for that the question is "what are you giving the community and doing with the workers," the way you treat them in regard to wages.

MR. KELLOCK: They get employment, in the first place.

THE COMMISSIONER: You might get an industry - I am not saying your industry at all - you might get some place where the government would say "Well, you would be better off if we simply pensioned these workers and took our revenue out of the tariff and let the industry go."

MR. McRUER: Some economists argue that.

MR. KELLOCK: Some economists will argue many things.

THE COMMISSIONER: In order to show that the basis is that this industry cannot thrive in Canada without a protective tariff, that is, without the right to ask the consumer to pay more than he would pay under a free trade policy, to tax him directly on the textiles he purchases, in order to justify that you must show what good you are handing back to the community. You begin with the workers. Well, all right, what are you doing for the workers? How are you dealing with them?

MR. KELLOCK: I have been all through that, my lord, and I do not want to repeat anything what I said.

THE COMMISSIONER: I know, but you raised it by going back to Mr. McRuer's factum. Mr. McRuer says if you simply purchase your labour as you would raw material, in the lowest markets, then you have not

return for that the question is "what are you giving the community and doing with the workers," the way you treat them in regard to wages.

MR. KILLOCK: They get employment, on the first hand.

THE COMMISSIONER: You might get an industry - I am not saying your industry at all - you might get some place where the government would say "well, you would be better off if we simply penalized these workers and took our revenue out of the tariff and let the industry go."

MR. [illegible] some economists argue that.

MR. KILLOCK: Some economists will argue many things.

THE COMMISSIONER: In order to show that the basis is that this industry cannot thrive in Canada without a protective tariff, that is, without the right to ask the consumer to pay more than he would pay under a free trade policy, to tax him directly in the tariff he purchases, in order to justify that you must show what good you are bringing back to the community. You begin with the workers. Well, all right, what are you doing for the community? How are you dealing with them?

MR. KILLOCK: I have been all through that, my lord, and I do not want to repeat anything that I said.

THE COMMISSIONER: I know, but you related it by going back to the Lorimer's factum. Mr. Mahony says if you simply purchase your labour as you would raw material, in the Lorimer matter, [illegible]

given a proper return to the community for the advantage you have got in the way of a protective tariff.

MR. KELLOCK: My industry, my clients ---

THE COMMISSIONER: Do you rely on that?

MR. KELLOCK: I say my clients are not saying that. I say my friends would have to go further than that and show that even if I was doing that then the result of the protective tariff enables me to do better.

THE COMMISSIONER: What is that?

MR. KELLOCK: My friend would have to say---

THE COMMISSIONER: He says more than that, I think. He says if all the result of this protective tariff, which has the effects I just gave you, is to enable this industry to go into the cheapest markets for labour and take its labour there, and let it go at that, then it is not worth protecting.

MR. KELLOCK: You mean the cheapest market in the country?

THE COMMISSIONER: The argument in that case is it is not worth protecting. If you are simply going to treat labour as you would raw material, leaving aside all question of human dignity, just as raw material buying it up wherever you find it cheapest, then his argument is you are not worth having.

MR. KELLOCK: I say, in the first place, my friend has not shown that.

THE COMMISSIONER: Do you say you are worth having if that is your position?

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have got in the way of a productive tariff.

MR. MELLOOK: My industry, my clients ---

THE COURT: Do you mean on tariff?

MR. MELLOOK: I say my clients are not asking that any my friends would have to go further than that and show that even if I was doing that upon the result of the productive tariff enables me to do better.

THE COURT: Then: what is that?

MR. MELLOOK: My friend would have to say---

THE COURT: He may have that, I think.

MR. MELLOOK: He would have to say if all the result of this productive tariff, which has the effects I just gave you, is to enable this industry to go into the competent machine for labour and take its labour there, and let it go at that then it is not worth protecting.

MR. [illegible]: You have the [illegible] argument [illegible]

MR. MELLOOK: [illegible] it is not worth protecting. If you are simply saving that labour as you would raw material, leaving out all question of human rights, just as you [illegible] saving it up wherever you find it cheapest, then his argument is you are not worth having.

MR. [illegible]: I say, in the first place, my friend [illegible]

THE COURT: Do you say you are worth having

MR. KELLOCK: I say that is not my position.

THE COMMISSIONER: Show me it isn't.

MR. KELLOCK: I do not want to repeat what I have said. I have analysed the whole situation as to our employment.

THE COMMISSIONER: You have come back to it.

MR. KELLOCK: I am coming back to it, but perhaps for a different purpose. I am coming back to it for the purpose I mentioned originally, and that is just to point out to your lordship that I am paying, whatever my comparative payment may be as compared to other industries in the country which I have dealt with, I am paying 60% and upwards more than my chief competitor in many lines. That is all I wanted to say.

THE COMMISSIONER: Well, all right.

MR. KELLOCK: Then, my lord, at the foot of the same page my friend says that ---

THE COMMISSIONER: Always remember, though, that from the real point of view your competitors' worker who has to live on 60% less wages than you have given your worker, maybe living much better at that, and under better conditions. So you don't answer that at all by saying we give 60 per cent. more wages.

MR. KELLOCK: I do, my lord, in this way, it is very relevant in this way that when the goods of that worker reached this country then the only thing that concerns me from a pe competitive point of view is the dollars and cents he has been paid as compared to

Mr. MILLER: I say that is not my position.

THE COMMISSIONER: Show me it isn't.

Mr. MILLER: I do not want to repeat what I have said. I have analysed the whole situation as to our [illegible].

THE COMMISSIONER: You have come back to it.

Mr. MILLER: I am coming back to it, but perhaps for a different purpose. I am coming back to it for the purpose I mentioned originally, and that is just to point out to your lordship that, as applied, whatever my comparative payment may be as compared to other industries in the country which I have dealt with, I am paying 80% and upwards more than my other competitor in many lines. That is all I wished to say.

THE COMMISSIONER: Well, all right.

Mr. MILLER: Then, my lord, at the foot of the same page my friend says that ---

[illegible], from the real point of view your competent worker who has to live on 80% less wages than you have given your worker, maybe living much better at that, and under better conditions. So you don't assess the at all by saying we give 80 per cent. more wages.

Mr. MILLER: I do, my lord, in this way, it is very relevant in this way that when the gross of that worker reaches this country then the only thing that concerns me from a competitive point of view is

the dollars and cents I have to pay to produce the same article, although from the standard of living of the two wage earners what your lordship says is perfectly correct.

MR. McRUER: May I interrupt for a moment. You say that it has not been established as the method in which they purchase labour. Mr. Gordon in his evidence --

MR. KELLOCK: That is only one company. I would prefer that Mr. Howard should deal with that. Mr. Gordon does not speak for the industry.

THE COMMISSIONER: Mr. Gordon said in regard to a certain class of skilled worker that he gave them what they would get some place else. For instance, he has a man equivalent to a man who might do the same work in a garage. Well, he says he would give him what he would get if he went to work in a garage. That is the evidence as to certain classes of workers, but insofar as that company is concerned we had better let it stand.

MR. KELLOCK: I think so.

THE COMMISSIONER: All right, go on.

MR. KELLOCK: At the foot of page 43 my friend refers to a large number of exhibits prepared by Mr. Hooper designed to show the extent of the protection afforded to the Textile Industry in Canada by the main tariff items affecting the importation of textiles into Canada. Now, my lord, from there on throughout the piece so far as concerns the first articles which my

friend deals with, namely cotton yarns and cotton fabrics, the exhibits he refers to, with the exception of two - or I should say four - deal with two articles in the case of cotton yarns. They all deal with articles of yarn and I am dealing with cotton yarns first, yarns which came, or which might have come from the United States. The exhibits do not show that they were actual imports at all. I think, as a matter of fact ---

THE COMMISSIONER: I think it was explained at the time this evidence was put in that it was to show what the Canadian consumer was being deprived of by the tariff, what he might get from the United States.

MR. KELLOCK: Well, I understood, my lord ---

THE COMMISSIONER: Wasn't that your purpose?

MR. McHUGH: Yes, of course, and to show the mill spreads here.

THE COMMISSIONER: What the United States market would have afforded without this protection, and what advantage home industry was taking of the tariff to make profits, by showing the mill spreads.

MR. KELLOCK: And also, as I understood it, my lord, what the tariff was costing the consumer, but they do not touch that, these exhibits from the United States do not touch that because our imports were not coming from the United States. They were coming from Great Britain, and that is what I want to deal with.

THE COMMISSIONER: Quite right, if the imports

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Crown Exam. with. Somewhat similar proof was given in Davies, the question is further it, with the exception of two - or I should say four - deal with two articles in the case of cotton yarns. They all deal with articles of yarn and I am dealing with cotton yarns first, yarns which came, or which might have come to the United States. The exhibits do not show that they were actual imports at all. I think, as a matter of fact ---

THE COURT OF K.B.: I think it was admitted at the time this evidence was put in that it was to show that the Canadian consumer was being deprived of by the tariff, what he might get from the United States.

Mr. FELLOWS: Well, I understood, my lord ---

[illegible]

Mr. MOSTER: Yes, of course, and to show the mill approach here.

THE COURT OF KING'S: That the United States market would have afforded without this protection, and that advantage done inure by the taking of the tariff to make profits, by enabling the mill upwards.

Mr. Fellows: And also, as I understand it, my lord that the tariff was [illegible] of the consumer, and they [illegible] [illegible] [illegible] to the United States. The, were coming from Great Britain, and that is what I want to deal with.

[illegible] [illegible] [illegible] if the imports

do not come well, you cannot say this man imported and that man did, and there is a difference, but the argument there is they did not import because the tariff excluded them.

MR. KELLOCK: From a particular country, but they did import from Great Britain.

THE COMMISSIONER: Yes, because the tariff did not exclude them.

MR. KELLOCK: Therefore these exhibits which deal with hypothetical imports from the United States are quite hypothetical and do not show either how the thing affected either the consumer or domestic producer because the consumer was getting his supply, insofar as he got imported supplies, from the United Kingdom. All the competition was coming from the United Kingdom and therefore I submit they have little or no value.

MR. McRUER: That is distorting it terribly, because the evidence was these yarns would naturally come from the United States, and that evidence, so far as I recollect, has not been contradicted. Therefore they must be yarns that were being supplied by Canadian producers.

MR. KELLOCK: My friend is always ahead of me. I am coming to that.

MR. McRuer: You say it is purely hypothetical; it is nothing of the kind.

MR. KELLOCK: The exhibits dealing with imports of

to not come well, you cannot say that man imported and that man did, and there is a difference, but the argument there is they did not in act become the tariff excluded them.

MR. V. TRACY: From a particular country, but they did import from Great Britain.

THE COMMISSIONER: Yes, because the tariff did not include them.

MR. MILLER: Therefore it is a question which deal appropriately imports from the United States are made by potatoes and do not keep either the thing affected either the consumer or commercial producer because the consumer was getting the supply, importer as he got imported supplies, from the United Kingdom. If the competition was coming from the United Kingdom and therefore I submit they were little or no value.

MR. MACKAY: What is disturbing it terribly, because the evidence was there people could conveniently come from the United States, and that evidence, so far as I remember, was not even contradicted. Therefore they must be young that were being supplied by Canadian producers.

MR. MILLER: My friend is always ahead of me.

I am behind.

MR. MACKAY: [illegible]

MR. MILLER: [illegible]

cotton yarns from the United States were not actual imports. They are what might have been.

MR. McRUER: Yes.

MR. KELLOCK: All right. Now, at the bottom of page 46, my lord, my friend says after discussing the tariff rates and the history of it, my friend says

> "The effect of the changes in duties in respect to cotton yarn in 1920 is evidenced from a perusal of Exhibits 819 to 826."

Now, those are purely United States hypothetical exhibits, and 857 to 859 which deal with yarnfrom Great Britain. My submission is that if one wants to get the picture of the history in those years one has to look at the actual, that is where the competition came from, and not hypothetical, where it did not come from at all. Now, my friend referred to a statement of Mr. Hooper which he also sets out on page 46, that competition with Canadian cotton yarns, would ordinarily and naturally come from the United States and not from Great Britain, this being due to the particular type of yarn made in the United States of America and its particular suitability for the Canadian trade. Then my friend says this evidence has not been contradicted by any of the manufacturers of yarn. I just wanted to take a moment to refer your lordship to what Mr. Hooper said, because I think it is a little bit better. It is at page 12026, commencing at line 10:

which prevent some the United States from having imports. They are where might have been.

MR. HOWDEN: Yes.

MR. MULLOCK: All right. Now, at the bottom of page 46, my lord, my friend says after discussing the tariff rates and the history of it, my friend says "The effect of the changes in duties in respect to cotton yarn in 1930 is evidenced from a perusal of Exhibits 812 to 826."

Now, those are yearly duties covering approximately exhibits, and 807 to 820 which deal with yarn from Great Britain. My submission is that if one wants to get the picture of the history in those years one has to look at the actual, there is where the competition came from, and not hypothetical, where it did not come from at all. Now, my friend referred to a statement of Mr. Cooper which he also cite on page 46, that competition with Canadian cotton yarn, mainly Egyptian and Australian yarn from the United States and not from Great Britain, this relate to the particular type of yarn made in the United States of America and its practical suitability for the Canadian trade. Then my friend says this evidence has not been corroborated by any of the manufacturers of yarn. I just wanted to take a moment to refer your lordship to what Mr. Cooper said, because I think it is a little bit better. It is

THE COMMISSIONER: What page?

MR. KELLOCK: 12026, line 10, to 12028, line 22.

"Q. There is a matter"--

This is cross-examination by myself:

"Q. There is a matter that I wanted to refer to. I may be wrong but I think there is a little misunderstandin perhaps arising from the way the question was put - "

This refers to the examination in chief earlier:

"I want to refer to your evidence at page 11703, lines 11 to 21, and if you will just follow me while I read it.

THE COMMISSIONER: When was that?

MR. KELLOCK: That was just one November 5th, just the other day. The question was:"

This is taken from the preceding questions and answers on the earlier day:

"'Q. Can you tell me, Mr. Hooper.....'

"And it apparently was with reference to Exhibit 804 which was your summary of tariff rates on cotton yarns beginning in 1907 - you remember that?

A. Yes, sir.

Q. Thequestion was: 'Q. Can you tell me, Mr. Hooper, from your experience in the Customs Department whether the supply of cotton yarns would tend mostly to come from Great Britain or from the United States?

A. Well, the yarns used in Canada follow more

Q. Will you read that question?

Q. (Reading: 12026, line 10, to 12028, line 24.

"A. There is a matter"--

This is cross-examination by myself:

"Q. There is a matter that I wished to refer to. I may be wrong but I think there is a little misunderstanding arising from the way the question was put - "

This refers to the examination in chief earlier:

"I want to refer to your evidence at page 12026, lines 21 to 24, and if you will just follow me while I read it.

THE COURT (Judge): Does not some

Q. (Continuing) Just the other day, the question was:

This is taken from the preceding questions and answers on the earlier day:

"Q. Can you tell me, Mr. Hooper....

"And it apparently was with reference to English dog which was your property or would come on your [illegible] - You remember that?

A. Yes, sir.

Q. (Continuing) Q. Can you tell me Mr. Hooper, from your experience in the Lancashire Spinners Federation the supply of cotton yarns [illegible] would be some from great Britain

[illegible]

[illegible]

closely those produced in the United States."

Now, it is, "used in Canada":

"--follow more closely those produced in the United States. I mean the specifications are similar, more so than the general yarns used in Great Britain."

That is "used" and not "sold".

"For example the twist is harder.

Q. Is harder in the Canadian Yarns than in the English? A. Yes.

Q. And harder in the American yarns than in the English? A. Yes.

Now, the question was as to whether the supply of cotton yarns would tend mostly to come from Great Britain or the United States. You did not quite answer that, you got off into--- A. I did not answer the question?

Q. Yes. Could you answer that question for me?

A. At the present time there are very few importations of yarns from the United States, they are very small. At one time the importations were quite large.

Q. Well, I had looked up for me, Mr. Hooper, --

A. And it is true that there are yarns coming in from Great Britain to-day.

Q. I had looked up for me the figures of imports of those yarns from Great Britain taken from Trade of Canada, and would these figures coincide

with your recollections: that in 1930 the imports from Great Britain were 35% of yarns brought in. In 1931 they were 37%. In 1932 they were 50%. In 1933, 67%. 1934, 93% and 1935, 92%? A. Yes, that would.

Q. That would accord with your recollection?

A. Yes. At one time the major portion of the importations was from the United States.

Q. But the competition now comes from Great Britain?

A. If there is any at all.

MR. McRUER: Because American yarns are excluded. It has been reversed.

THE WITNESS: Not the total importations are down, are they not?

MR. KELLOCK: Q. I am just saying insofar as there are importations and therefore competition for the Canadian mills, the source of the competition is Great Britain? A. Yes.

THE COMMISSIONER: Q. That has reference to cotton yarns? A. At the present time, my lord, since 1932.

MR. McRUER: There would be no competition from the United States because the tariff is too high.

MR. KELLOCK: That is argument.

MR. McRUER: My question would be where they would come from if no barrier.

MR. KELLOCK: My question is - where they do come from."

with your recollections; that in 1890 the imports from Great Britain were 80% of items occurring in. In 1891 they were 87%. In 1892 they were 90%. In 1893, 94%, 95% and 1894, 95%?

A. Yes, that would.

Q. That would record also your recollections?

A. Yes. At one time the major portion of the importations was from the United States.

Q. But the competition now comes from Great Britain?

A. If there is any at all.

Mr. MORTON: Because American items are excluded. It has been averaged.

Mr. MORTON: May the total imports then be [illegible]

Mr. Kellogg: Q. I am just saying because on the one importations and therefore consideration for the American mills, the source of the competition is [illegible]

A. Yes.

[illegible]

Mr. Morton: There would be no competition from the United States because the tariff is too high.

Mr. Kellogg: That is argument.

Mr. Lyons: My question would be where they would come from if no barrier.

Mr. Kellogg: My question is - where they do come [illegible]."

Now, my lord, in my Factum - I have had occasion to refer to it already - there is a number of tables right at the end of Section E.

THE COMMISSIONER: Tables, yes.

MR. KELLOCK: Yes, your lordship sees the first one which has in the upper right hand corner section E, supplement 1. Now, at the bottom of the page it has Canadian imports of cotton yarns in thousand pounds. Now, the total in 1926 was 4,832,000, and in 1936 --

THE COMMISSIONER: Pardon me, 1926?

MR. KELLOCK: Yes, 1936, my lord, 4,832,000, and in 1936 5,130,000, so that Mr. Hooper's recollection---

THE COMMISSIONER: Pardon me a moment, 1936?

MR. KELLOCK: That is the extreme right hand column. There was a new sheet given to your lordship. I don't know whether it got into your brief or not. Well, take the 1935 figure, it will do just as well.

THE COMMISSIONER: No, what is the 1936 figure?

MR. KELLOCK: It would be 5130 to correspond, 5,530,000. So that Mr. Hooper's recollection that the total importations were down as between certainly 1926 and 1936 - it is just the other way. They are up.

MR. McRUER: No.

THE COMMISSIONER: Pardon me, you are talking of Great Britain?

MR. KELLOCK: Yes.

THE COMMISSIONER: You say as between Great Britain

refer to it already - there is a number of scales right at the end of section E.

MR. BRIDGE: Yes, your lordship sees the first which was in the upper right hand corner section E, supplement I. Now, at the bottom of the page it has Canadian imports of cotton yarns in thousand pounds. Now, the total in 1926 was 4,[illegible], and in 1926 --

MR. BRIDGE: Yes, 1926, my lord, 4,[illegible], and in 1926 5,136,000, so that Mr. Cooper's recollection --

MR. [illegible]: That is the extreme right hand column. Has a man about given to your lordship. I don't know whether it got into your brief or not. Well, it will do just as well.

THE COMMISSIONER: Pardon me, I am very walking of [illegible]?

MR. BRIDGE: Yes.

THE COMMISSIONER: Pardon me, you are talking of [illegible] between Great Britain and Canada and 1926 - it is just the other way. They are [illegible].

MR. BRIDGE:

THE COMMISSIONER: Pardon me, you are talking of [illegible]?

MR. BRIDGE: Yes.

THE COMMISSIONER: You say as between Great Britain

MR. KELLOCK: It is the total, my lord, the figure I have given.

THE COMMISSIONER: Not Great Britain?

MR. KELLOCK: It is the total, the first line.

THE COMMISSIONER: Then, the figure is not up. The total of 1926 is much more than that.

MR. KELLOCK: The 1926 figure is less than 1936.

THE COMMISSIONER: You have just given me 5,530,000 as the total importations for 1936.

MR. KELLOCK: Yes.

THE COMMISSIONER: From all countries?

MR. KELLOCK: Yes, in 1926 the figure is 4,822,000.

THE COMMISSIONER: I see.

MR. McRUER: Take the 1927 figure.

THE COMMISSIONER: You give the total on top and then you bring it down.

MR. KELLOCK: Take the total on top; I am taking that the total is --

MR. McRUER: Take the 1927 figure. You put Mr. Hooper on the spot with one year.

MR. KELLOCK: I am not putting Mr. Hooper on the spot.

MR. ~~KEKKD~~ McRUER: Take 1927, 1928 or 1929.

MR. KELLOCK: Mr. Hooper was speaking from his recollection. I have got the accurate figures he did not have before him.

MR. McRUER: Were you dealing with one year with Mr. Hooper? If you take 1927, 1928, or 1929--

MR. KELLOCK: I am not stomping with just one

MR. MCLOOM: It is the total, my lord, the figure I have given.

THE COMMISSIONER: Great Britain?

MR. MCLOOM: It is the total, the first line.

THE COMMISSIONER: Then, the figure is not up. The total of 1956 is much more than that.

MR. MCLOOM: The 1956 figure is less than 1955.

THE COMMISSIONER: You have just given me 3,980,000 as the total importations for 1956.

MR. MCLOOM: Yes.

THE COMMISSIONER: From all countries?

MR. MCLOOM: Yes. In 1955 the figure is 4,481,[illegible].

THE COMMISSIONER: I see.

MR. MCLOOM: Have the last figure.

THE COMMISSIONER: You give the total on top and then you bring it down.

MR. MCLOOM: Take the total on top; I am taking that the total is --

[illegible]

Mr. Hooper on the spot with one year.

MR. MCLOOM: I am not putting Mr. Hooper on the spot.

[illegible]

recollection. I have got the accurate figures he did not have before him.

MR. MCLOOM: Are you dealing with one year with Mr. Hooper? If you take 1957, 1956, or 1955--

I said was that as between the e two years the importations were up rather than down.

MR. McRUER: You include in this yarns for thread and those things that are different than the class of yarns that Mr.Hooper was dealing with.

MR. KELLOCK: What was Mr. Hooper dealing with on the evidence I read except cotton yarns? Does he differentiate between the items in the class?

MR. McRUER: The class that we said came ordinarily from the United States. We do not deal with thread manufacturers or yarns from England at all.

MR. KELLOCK: You are the only person that is raising it. We were talking about cotton yarns, and I read Mr. Hooper the percentages and Mr. Hooper agreed with it so we must have been talking about the same thing.

MR. McRUER: You are confusing it. There are certain yarns for making threads that ordinarily come from the United Kingdom.

MR. KELLOCK: I am dealing with what I think Mr. Hooper was talking about. I am dealing with part o of your brief, If you want to break the figures down further go ahead.

MR. McRUER: You persist in confusing two things.

MR. KELLOCK: I am not confusing anything.

MR. McRUER: Yes, you are. There is a class of yarns that did come from the United States in 1926,

I said was that as between two or two years the importations were up rather than down.

Mr. McCUTCHEON: Have you seen the [illegible] and those things that are different to the claims of years that Mr. Hooper was dealing with.

Mr. [illegible]: Yes, I have seen [illegible] on the evidence I read over, I notice there was no differentiation between the items in the claims.

Mr. McCUTCHEON: The claims that we said came partially from the United States. We do not deal with treated manufactures or yarns from England at all.

Mr. [illegible]: Has you had any [illegible] building it. We were looking some cotton yarns, and I read Mr. Hooper the arrangements and Mr. [illegible] agreed with it so we must have been talking about the same thing.

Mr. McCUTCHEON: You are confusing it. There are certain yarns for making tweeds that ordinarily come from the United Kingdom.

Mr. [illegible]: I am dealing with what I think Mr. [illegible] was talking about. I am dealing with what is of your claim. If you want to break the figures down [illegible] go ahead.

Mr. [illegible]: [illegible]

Mr. [illegible]: I [illegible]

1927, 1928, and 1929, and that do not come from the United States now.

MR. KELLOCK: They come from Great Britain.

MR. McRUER: No, they do not.

MR. KELLOCK: Why do you say they don't?

MR. McRUER: Because there has been very little change in the yarns imported from Great Britain, and as a matter of fact they are down from 1927 to what they are now.

MR. KELLOCK: My friend says there is very little change. That is what I want to analyse.

MR. McRUER: I say that the point is we have not got a break down of them as to what extent they are yarns that came dew from the United States.

MR. KELLOCK: You are the man that is raising that point. If you want a breakdown why get it, but I want to call to his lordship's attention and just firstly - I will come to secondly and thirdly in a moment - that as between 1926 and 1936 the total imports of cotton yarns are not down but they are up.

THE COMMISSIONER: That is on all cotton yarns.

MR. KELLOCK: All cotton yarns, my lord, yes. Now, as between the years 1927 and 1936 they are slightly down.

THE COMMISSIONER: I can see that for myself.

MR. KELLOCK: What I want to come to, my lord, take 1932, I want to call your lordship's attention

Lady, Jane, and Mary, and that is our from the United States now.

Mr. MILLOON: They come from Lake Wisla.

Mr. McLEAN: No, they do not.

Mr. MILLOON: Why do you say they don't?

Mr. McLEAN: Because there has been very little change in the yarns imported from Great Britain, and as a matter of fact they are down from 1927 to that year.

Mr. MILLOON: My friend may know a very lot of yarns.

That is what I want to analyze.

Mr. McLEAN: I say that the point is we have not got a break down of them as to what nations they are yarns that came raw from the United States.

Mr. MILLOON: You are aware that is a very good point. If you want a breakdown why get it, but I want to call to his lordship's attention and just briefly - I will come to accordly and briefly in a moment - that as between 1926 and 1930 the total imp of cotton yarns are not down but they are up.

THE CONSTABLE: That is on all cotton yarns.

Mr. MILLOON: All cotton yarns, my lord, yes. as between the years 1927 and 1928 they are down.

The Lordship: I can see that for myself.

Mr. MILLOON: What I want to come to, my lord, since 1928, I want to call your lordship's attention

from 1932 on to the switch which took place as between yarns from the United Kingdom and from the United States. Your Lordship will see that the United Kingdom became the chief source of supply. For instance, in 1932 - the contrast is more marked if we go to 1931.

THE COMMISSIONER: In 1932 it just happens that the figures are almost exactly equal.

MR. KELLOCK: Your lordship sees the preceding year, 1931, and comparing that with 1932 your lordship sees the tendency had there set in. Then, in 1933 it is well under way. There was 3,293,000 from the United Kingdom, and from the United States they had sunk to 1,177,000. In 1934 they go up to over 4,000,000 from the United Kingdom, and from the United States they go down to just 322,000, and the same ~~setry~~ story is continued across the page.

THE COMMISSIONER: Where does Mr. Hooper's evidence come into this, in what particular? I understand his evidence means there were certain cotton yarns employed for certain purposes which used to come from the United States which have not switched over to Great Britain but which are now made here; is that it.

MR. KELLOCK: I do not so understand it. I don't know whether he says that or not.

THE COMMISSIONER: Is that what you mean, Mr. Hooper?

MR. HOOPER: Yes, there are such.

MR. KELLOCK: Is that what you meant by your evidence?

from 1932 on to the period which took place as [illegible]
area from the United Kingdom and from the United [illegible]
Your Lordship will see that the United Kingdom becomes
the chief source of supply. For instance, in 1936
the contract is more marked if we go to 1937.

The Commissioner: I take it that represents that
the figures are almost exactly equal.

Mr. Mahoney: Your Lordship sees the proportion
, 1937, and comparing that with 1936 your Lordship
sees the tonnage had risen at 1m. From, in 1938
it is well under way. There was 3,393,000 from the
United Kingdom, and from the United States they had
risen to 1,177,000. In 1939 they go up to over
4,000,000 from the United Kingdom, and from the United
States they go down to just 500,000, and the same
story is continued across the page.

[illegible] come into this, in what particular? I understand
his evidence means there is a certain bottom press
employed for certain purposes which used to come from
the United States which have not switched over to
these mills but which the old press is used
for.

Mr. Mahoney: I do not so understand it. I don't
know whether he says that or not.

The Commissioner: It is what you mean, Mr. Mahoney
[illegible]

MR. HOOPER: I don't think - that was one thing I had in mind. There are others.

THE COMMISSIONER: If you take these figures alone they would appear to justify Mr. Kellock's position, that is, we are imp rting substantially the same quantity of cotton yarns and there is a switch from United States imports to United Kingdom imports.

MR. McRUER: Are they the same class of yarns that formerly came from the United States that now come from the United Kingdom?

MR. HOOPER: In yarns for thread manufacturers much of that business has been transferred from the United States to the United Kingdom. That is quite right. In the yarns for hosiery manufacturers I would think that Canadian Manufacturers have got a larger portion of that business to-day than they had.

THE COMMISSIONER: The Canadian manufactureris making a good deal of his own yarn.

MR. HOOPER: Not the yarn manufacturer, no.

THE COMMISSIONER: I mean our industry is making its own yarn.

MR. HOOPER: Yes, I think the records would show that the Canadian production is up, the sales of yarn in Canada are up over those years. There are some yarns that are not imported at all.

THE COMMISSIONER: If not imported at all they are made here.

MR. HOOPER: They are made here. At one time

MR. HOOKER: I don't think - that was not in my mind. There are others.

THE CHAIRMAN: If you take these figures alone you would appear to justify Mr. Hooker's position, that we are importing substantially the same quantity of cotton yarns and there is a saving from United States imports to United Kingdom imports.

MR. HOOKER: Are they the same class of yarns that formerly came from the United States and now come in from Canada?

MR. HOOKER: In yarns for thread manufacture a good of that business has been transferred from the United States to the United Kingdom. That is quite right. In the yarns for hosiery manufacture I would say we have lost the commercial and gain a large portion of that business to-day than they had.

THE CHAIRMAN: The Canadian manufacturer is making a good deal of his own yarn.

MR. HOOKER: Not the yarn manufacturer, No.

THE CHAIRMAN: I mean our industry is making its own yarn.

MR. HOOKER: Yes, I think the tendency will be that the American production is up, the value of yarn is should be at least three times.

THE CHAIRMAN: There are some yarns that are not imported at all.

THE CHAIRMAN: If we imported it all they would have left.

we got mercerized yarns from the United States. We no longer get mercerized yarns to any extent. We bring in unmercerized yarns from the United Kingdom and they are mercerized here.

MR. KELLOCK: I just notice here from Trade of Canada for the calendar year, 1935, Mr. Hooper mentions here yarns for knitting, I see the total imports in the 12 months ending 1935 from all countries were 434,841,- oh, that is only from the United Kingdom alone. The preceding year it was only 381,648. So it does not look there as though the domestic industry was getting more of that particular business.

MR. HOOPER: A great amount of that is exported, my lord.

THE COMMISSIONER: What is that?

MR. HOOPER: Quite a good amount of knitted goods are exported.

THE COMMISSIONER: Our knitted goods?

MR. HOOPER: Yes.

MR. KELLOCK: I am dealing with the evidence, and I find Mr. Hooper has some figures we have not got on my sheets.

THE COMMISSIONER: I think substantially his figures justify you. There must have been quite a switch.

MR. HOOPER: There is quite a switch.

THE COMMISSIONER: From the United States to Great Britain.

MR. KELLOCK: What Mr. Hooper says at the top of

we got manufactured yarns from the United States. We no longer get mercerized yarns to any extent. We get in unmercerized yarns from the United Kingdom and they are mercerized here.

Mr. Hodgson: I just notice here from trade of Canada for the calendar year, 1928, Mr. Hooper mercerized yarns for knitting, I see the total imports of knitting cotton yarns from all countries were 4,[illegible], of, that is only from the United Kingdom alone. The preceding year it was only 3[illegible]. So it does not look there as though the domestic industry was getting more of that particular business.

Mr. Hooper: A great amount of that is mercerized, my lord.

The Chairman: What is that?

Mr. Hooper: Quite a considerable amount of knitting yarns mercerized.

The Chairman: Our knitted goods.

Mr. Hodgson:

Mr. Hodgson: I am dealing with the evidence, and I find Mr. Hooper has some figures we have not got among theirs.

Mr. Chairman: I think somewhat his liability you. These must have been made a matter.

Mr. Hodgson: [illegible]

The Chairman: From the United States to

page 12028:

"Q. But the competition now comes from Great Britain? A. If there is any at all."

I think the import figures show there is considerable competition.

MR. McMURR: That does not alter my statement. I was putting it from the consumer's point of view. The competition would ordinarily come from the United States, and these were the prices in the United States, and they had come from the United States prior to the increase in duties.

MR. KELLOCK: I am first establishing that the competition in fact does come from Great Britain and then I want to deal with the suggestion which my friend makes. Now, Mr. Hooper did not say that. He did not say that the yarn sold here by British exporters in Canada is not comparable to the domestic product. He said the yarn used in Canada tends more to conform to that produced in the United States, than yarn used in Great Britain. Now, my lord, my friend is building something on Mr. Hooper's evidence that Mr. Hooper did not say at all, and the fact is, in the first place, that these yarns, insofar as there are imports, and I submit there are substantial imports on those figures, do come from Great Britain, and Great Britain has been making cotton yarns for a good many years, and surely if there is a preference on the part of the Canadian user in the hardness of the

[illegible]

Mr. [illegible]:

"Q. But the competition now comes from great Britain? A. If there is any at all."

I think the import figures show there is considerable competition.

Mr. [illegible]: That does not alter my statement. I was putting it from the consumer's point of view. The competition could ordinarily come from the United States, and there were the prices in the United States and they had come from the United States prior to the increase in duties.

Mr. [illegible]: I am fully satisfied that the competition in fact does come from Great Britain. I want to call attention to a statement which my friend makes. Now, Mr. Cooper did not say that. He did not say that the yarn sold here by British exporters in Canada is not comparable to the domestic product. He said the yarn used in Canada hence more to conform to that produced in the United States, than yarn used in Great Britain. Now, my lord, my friend is building something on Mr. Cooper's evidence that Mr. Cooper did not say at all, and the fact is, in the first place, that [illegible], however is [illegible] important, and I submit there has [illegible] on these figures, do come from Great Britain, and Great Britain has been making cotton yarns for a great many years, and merely if there is a difference in [illegible]

twist or anything else, our cotton machinery comes from Great Britain and they have got it there. If there is some kind of quality in the yarn that makes the yarnmore suitable and desirable to our consumer, and the English consumer wants something else surely the Englishman is in a position to make it, because he has got the machinery and he is not going to force something on this market that cannot be sold here, and this stuff that is coming in here is coming in here for sale and is sold, and when one goes to the exhibits which my friend finally gets down to in his section on this matter, 857 to 859, Mr. Hooper there compares two descriptions of cotton yarn from Great Britain with the domestic product. One is 30's cotton hosiery yarn and the other is 2 ply 24's cotton warp yarn. Now, those yarns, at least, must be the same type as the Canadian or else there would be no object in comparing them at all. So my submission, my lord, on this whole matter so far as cotton yarns - and I come to the same submission with regard to cotton fabrics - is that the effective duty rates, taking my friend's language, are the British preferential duty rates, and have been since 1932, and that they are the ones to look at both from the standpoint of the Canadian consumer and the Canadian producer, and not hypothetical examples of what might have been as far as the United States is concerned.

Now, just one or two matters of minor importance.

ROBT. BRYCE
CHARTERED STENOGRAPHIC
REPORTER
TORONTO - CANADA

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bait or anything else, our cotton machinery comes from Great Britain and they have got it there. If that is some kind of quality in the yarn that makes the yarns suitable and desirable to our consumer, the English consumer knows something else surely the Englishman is in a position to make it, because he has got the machinery and is not going to force somebody on this market that doesn't be sole here, and this evil that is coming in here is coming in here for sale and is sold, but when one goes to the candidate with my friend Donly goes down to in his position on this matter, BUT to MEN, Mr. Cooper there compares the description of cotton yarn from Great Britain with domestic yarns. One is 40's cotton hosiery yarn and the other is 2 ply 44's cotton warp yarn. Now, these yarns, at least, must be the same type as the Canadian or else there would be no object in importing them at all. So my contention, my look, on this single matter so far as cotton yarns - and I come to the same conclusion with regard to cotton fabrics - is that the effective duty rates, taking my friend's calculation, the British preferential duty rates, and have been since 1906, and that they are the rates to look at both from the Canadian or any foreign consumer and the Canadian producer. And that is the total review I submit.

On page 47 of my friend's Brief at the foot of the page - my friend repeats this contention a good many places throughout his brief - the last paragraph, he says:

> "In June 1931, an additional protection was given to the Canadian manufacturer by the imposition of an excise tax of 1% on all goods imported into Canada."

Now, that is hardly protection, my lord, to the full extent, at least, when the Canadian manufacturer had to pay that very same excise tax on his raw material. In 1935, as pointed out elsewhere, that amounted in dollars to $445,000 on cotton alone, raw cotton alone. Now, at the present time the English manufacturers pay no such tax on their raw cotton and I pay 3% on my raw cotton and my finished product competes with the English finished product here so it is hardly correct to say that the excise tax at any time was a protection to the Canadian manufacturer; and at the present time it is a natural handicap to the Canadian manufacturer in competing with British goods.

THE COMMISSIONER: Well, I think though that you are not putting the question quite in its proper form. That is to say, that any advantage that the British manufacturer gets at home in his exports, that is, if he pays no excise, for instance, or if he gets a bonus, that affects your protection all along the line, not only in regard to the 1% or 2%.

On page 67 of my friend's Brief at the foot of the page - my friend repeats this contention a good many places throughout his brief - the last sentence, he says:

"In June 1909, an Imperial Proclamation was given to the textile manufacturer by the imposition of an excise tax of 15 on all goods imported into Canada."

Now, that is hardly protection, by long, by the full extent, at least, when the Canadian manufacturer has to pay that very same excise tax on his raw material. In 1909, as pointed out elsewhere, that amounts in dollars to $-65,000 on cotton alone, raw cotton alone, at the present time the British manufacturer pay no such tax on their raw cotton and I pay 15 on my raw cotton and my finished product competes with the English finished product here so it is not correct to say that the excise tax at any time was a protection to the Canadian manufacturer, and at the present time it is a natural handicap to the Canadian manufacturer in competing with British goods.

THE CHAIRMAN: Well, I think perhaps that you are not putting the question quite in the proper form. What is to say, that any advantage that the British manufacturer gets at home in his export, that is, if he goes to Australia, for instance, or if he goes to Japan, that offsets your protection all along the line, but only in respect to the 15 %.

MR. KELLOCK: Quite, my lord, but I am just drawing attention that I do not think my friend has put his submission in a way that means anything.

THE COMMISSIONER: He puts it all right. Supposing the tariff protection is 20% and you add to that 1% excise; that does increase your protection, and any advantage the British manufacturer has which you have not got in the way of a bonus affects just as much your protection on the tariff of 20% as it does the excise of 1%.

MR. KELLOCK: Then, I will put it this way---

THE COMMISSIONER: It applies all along the scale. It does not apply particularly to the one per cent. excise.

MR. KELLOCK: Then, putting it the way my friend does it is only a very small part of the picture, and that is my point.

MR. McRUER: It is 3% on the duty-paid value, and that amounts to as high as 6%.

THE COMMISSIONER: It is a substantial amount.

MR. KELLOCK: As between me and Great Britain.

THE COMMISSIONER: As between you and Great Britain. I say you take whatever your whole protection is and then you set off against that whatever your competitors' bonuses are. You need not tack his bonus on to this particular item of the protection.

MR. KELLOCK: The 3% excise tax, from any point of view ---

Mr. KELLOCK: Quite, my lord, but I am just drawing attention that I do not think my friend has put his argument in a very just some anything.

THE CHAIRMAN: He puts it all right, [illegible] the tariff protection is bad and you end to that in excess; that does increase your protection, and any advantage the British manufacturer may enjoy from not get in the way of a horse already just as much protection on the tariff of 30% as it does the excise of 1%.

Mr. KELLOCK: Then, I will put it this way---

THE CHAIRMAN: It may lies all along the line. It does not apply particularly to the one per cent.

Mr. KELLOCK: Then, putting it the way my friend does it is only a very small part of the pleasure, and that is my point.

Mr. [illegible]: It is 3% on the duty-paid value, and that amounts to as high as 8%.

THE CHAIRMAN: It is a substantial amount.

Mr. KELLOCK: As between me and [illegible].

THE CHAIRMAN: As between you and [illegible] I say you have discovered your whole protection is and then you set off against that whatever your competitors are. You need not 4 [illegible] in to the [illegible] in the [illegible].

Mr. [illegible]: [illegible]

THE ---

THE COMMISSIONER: What does it matter whether they call it excise or something else. They take an imported article and they put on it a valuation for duty. Then they arrive at the duty and no matter how it is they add 3% on that.

MR. KELLOCK: They do not in the case of imports from Great Britain. They have not since March, 1935.

THE COMMISSIONER: Have they struck it off? That is not what he is talking about then. He says "An additional protection was given to the Canadian manufacturer by the imposition of an excise tax of 1% on all goods." That is no longer true? If you say it is no longer true it is another argument.

MR. McRUER: It was true at that time.

MR. KELLOCK: At the time the 1% was put on it was on British import, and I should say in answer to my friend that to say it was additional protection to me because it was on the fabrics, these imported fabrics, is only part of the story because I in turn had the same thing to pay on my raw material which the Englishman did not have to pay.

THE COMMISSIONER: As I say it does not matter whether you call it excise or surtax or what. It all increases your protection.

MR. KELLOCK: Unless I pay the same thing on my raw material.

THE COMMISSIONER: If you won't understand me there

is no use.

MR. KELLOCK: I do not want your lordship to say that.

THE COMMISSIONER: I say if the Customs Tariff says 30% with a surtax of 3% that is added to the protection, isn't it? Whether they call it excise or call it surtax or call it whatever you like what difference does it make?

MR. KELLOCK: It makes no difference.

THE COMMISSIONER: None. Any advantage your competitor may have in the Old Country applies just as much to the 30% as to the extra 3%.

MR. KELLOCK: Yes.

THE COMMISSIONER: Of course it does.

MR. KELLOCK: And as your lordship says, all I am drawing attention to is the other side of it, that any disadvantage from my point of view, whether it is the excise tax which I pay on my raw cotton, or a sales tax I pay that he doesn't pay, or anything else, then that must be set out.

THE COMMISSIONER: You are back to where we were this morning. When Parliament is considering what is adequate protection for you that means you, having regard to all the factors of your situation in respect to your competing countries.

MR. KELLOCK: I am not saying anything as to that.

THE COMMISSIONER: All those factors must be there. You cannot pick out one particularly and say that applies

is no use.

Mr. [illegible]: I am not sure I understand it my [illegible].

The [illegible]: I may if the Customs Tariff says 30% with a surtax of 7% that is added to the [illegible], isn't it? Whether they call it a tax or call it surtax or call it whatever you like what difference does it make?

Mr. [illegible]: It makes no difference.

The Canadian [illegible]: Yes. My argument your competitor may have in the old Country applies just as much to the 30% as to the extra 7%.

Mr. [illegible]: Yes.

The [illegible]: Of course it does.

Mr. [illegible]: And we [illegible] MUST, will I be drawing attention to in the other side of it, some my disadvantage from my point of view, whether it is the surtax tax which I pay on my raw cotton, or the sales tax I pay that he doesn't pay, or anything else, does just what we get out.

The Court [illegible]: You are bound to [illegible] this [illegible]. Your [illegible] is concerned that is [illegible] for you that means you, having [illegible] to all the [illegible] of your attention in regard to your [illegible].

Mr. [illegible]: I am [illegible] on the [illegible].

The [illegible]: [illegible]

to the excise I pay and another place to something el
I pay, because all this you pay, and which, in fact,
the consumer would pay if the thing was imported,
all that is added to your protection.

MR. KELLOCK: Your lordship has my point. I do not need to labour it.

THE COMMISSIONER: Certainly I have your point.

MR. KELLOCK: As I argued this morning, the mere statement of the duty rate on my fabric or the fabric that competes with me is only part of the picture. Then, my lord, at page 48 at the top my friend refers to the question of exchange, and I call your lordship's attention to something that is obvious in connection with that, and that is that while the importer ---

THE COMMISSIONER: Where are we at now?

MR. KELLOCK: Paragraph 4, my lord, where he says:

"In addition to this, Canadian funds were at a discount", and so on:

"...giving the Canadian manufacturerse this further protection."

Well, the same thing applies there ---

THE COMMISSIONER: For instance, we had Mr. MacDougall of the Belding-Corticelli people in Montreal. He said - I think it was in reference to France that he was talking - He said we have ample protection against them because Canada could not afford to buy French goods on account of the decline in the dollar. There is one of your own men saying it is an additional

form of protection.

MR. KELLOCK: All I am pointing out is the other side of the picture, that I had the same exchange rate to pay on my raw material.

THE COMMISSIONER: It depends where you bought it.

MR. KELLOCK: Well, the United States, raw cotton, my lord, the same thing.

THE COMMISSIONER: That is quite right, and that is what the Japanese says when the duty is put up on him. He says I have to buy my raw materials outside and my yen does not buy as much as it would at par value.

MR. KELLOCK: I have recognized that, I think, in my brief, my lord. Now, my lord, my friend goes on from here to attempt to show - and this is a new subject - to attempt to show that the Canadian manufacturer took advantage of the increase in American prices.

THE COMMISSIONER: I think it is too new a subject to continue now.

MR. McRUER: It is too contentious to start so late.

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-- The Commission adjourned at 5 P.M. to resume Monday March 1st, at 10.30 A.M.

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